

# **Official Transcript of Proceedings**

## **NUCLEAR REGULATORY COMMISSION**

Title: Public Meeting to Discuss the  
Decommissioning Criteria of the  
West Valley Demonstration Project

Docket Number: (not applicable)

Location: Ashford Hollow, New York  
(near West Valley)

Date: Wednesday, April 17, 2002

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Pages 1-127

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 + + + + +  
4 PUBLIC MEETING TO DISCUSS THE  
5 DECOMMISSIONING CRITERIA OF THE  
6 WEST VALLEY DEMONSTRATION PROJECT

7 + + + + +  
8 WEDNESDAY, APRIL 17, 2002

9 + + + + +

10 Conference Room C-1  
11 Ashford Office Complex  
12 9030 Route 219  
13 Ashford Hollow, New York

14  
15 The Public Meeting commenced at 7:00 p.m.

16 NRC STAFF:

17 FRANCIS "CHIP" CAMERON, Facilitator

18 LARRY W. CAMPER

19 CHAD J. GLENN

20 JAMES LIEBERMAN  
21  
22  
23  
24  
25

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P-R-O-C-E-E-D-I-N-G-S

(7:03 p.m.)

MR. CAMERON: My name is Chip Cameron, and I'd like to welcome you to tonight's meeting.

And I'm the Special Counsel for Public Liaison at the Nuclear Regulatory Commission, and it's my pleasure to serve as your facilitator tonight. And my job tonight will be to try to help you all have a productive meeting.

And I'd like to cover three things about the meeting process before we get into the substance of tonight's discussions. First, I'd like to talk about objectives of the meeting tonight. Secondly, I'd like to go over the format and ground rules for tonight's meeting. And, third, I'd like to just give you an overview of the agenda, so you know what to expect tonight.

In terms of objectives, our first objective is to try to give you a clear understanding of the responsibilities of the various regulatory agencies involved at the West Valley sites. And not only their responsibilities, but what is the relationship among those individual agency responsibilities.

Our second objective is to listen to your

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1 comments, listen to your concerns, so that the agency  
2 can be mindful of those concerns, those comments, as  
3 they move to implement their various responsibility.

4 In terms of format, we're going to have a  
5 series of brief presentations by a number of agencies,  
6 and we're going to be going out to you for questions,  
7 for discussion, for comments on those  
8 responsibilities. The ground rules tonight are  
9 simple, and they're all aimed at trying to help us all  
10 have a productive meeting.

11 First, I would just ask you to try to be  
12 as concise as possible in your remarks tonight, and  
13 not only people in the audience but also speakers from  
14 the agencies. We have a lot of moving parts, so to  
15 speak to tonight's meeting, a lot of issues, and the  
16 most important thing is I want to make sure that  
17 everybody has a chance to participate that wants to  
18 participate. So if we're as spare as possible in our  
19 remarks, then we can -- that will help to achieve that  
20 particular goal.

21 The second ground rule, if you want to  
22 speak, please raise your hand, and I will bring you  
23 this talking stick. And be patient; we will get to  
24 you if you have something to say.

25 The third ground rule is, please let's

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1 have only one person talking at a time, most  
2 importantly so that we can give our full attention to  
3 whomever has the floor at the moment, but also because  
4 we are taking a transcript. Mary Ann is our  
5 stenographer tonight, and she's going to be taking  
6 down all of the presentations and comments. And if we  
7 have just one person speaking at a time, we could get  
8 a clear transcript.

9 That transcript will also be available  
10 from the NRC. If you would like to have a copy of it,  
11 it will also be posted on the NRC website.

12 In terms of the agenda for tonight's  
13 meeting, we thought it would be useful to have some  
14 context for you on where the -- on the status of the  
15 site cleanup. And so what we're going to do is we're  
16 going to ask Alice Miller from the Department of  
17 Energy, and Paul Piciulo from New York State Energy  
18 Research and Development Authority to give us some  
19 context on the site.

20 We're then going to go to the NRC  
21 responsibilities, and we have Larry Camper from the  
22 NRC and Chad Glenn, who are already up here, who are  
23 going to talk about NRC responsibilities generally for  
24 the West Valley site, and specifically the policy  
25 statement. We'll then go out to you for questions and

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1        comments.

2                    I just want to note that we will be asking  
3        Alice Miller from DOE and -- Williams --

4                    (Laughter.)

5                    I'm trying to think, where did that come  
6        from?

7                    (Laughter.)

8                    Alice, my apologies.

9                    (Laughter.)

10                   Okay? And I'll probably make this mistake  
11        a couple of other times tonight, so please excuse me.

12                   But Alice and Paul -- I think Alice  
13        probably works better. I won't forget that. But  
14        Alice and Paul will come back later on in the evening  
15        when we have a general discussion. So if there are  
16        questions for the Department of Energy, for New York  
17        State, they will be up here to answer those questions.

18                   I know that some people would like to make  
19        formal comments perhaps, and I would just encourage  
20        you -- we'd like to try to have this be as interactive  
21        as possible, but we do have room for formal comments,  
22        and we'll do that at the end of the evening. And if  
23        you want to submit a written copy of those formal  
24        comments, we'll make sure that we get them on the  
25        agenda -- I mean, on the transcript, rather.

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1           There may be things that come up,  
2           questions that you have during one particular set of  
3           presentations that don't fit squarely under that  
4           presentation. I'll put those down in the parking lot  
5           and make sure that we come back and get them before  
6           the end of the evening.

7           Also, anything -- there may be certain  
8           pieces of information that one of the various agencies  
9           will want to get back to you on. We'll also list that  
10          up there, so that we don't lose track of any of that.

11          We will try to get you out on time. We do  
12          have a lot of information to cover, but we'll try to  
13          end on time. But the staff of the various agencies  
14          will be here after the meeting to meet informally with  
15          you.

16          And I wanted to emphasize a point about  
17          continuity of this whole process. This is just one  
18          meeting tonight, and obviously we're not going to be  
19          able to do everything that we want to do. But I know  
20          that the NRC staff, the other agency staff, are  
21          receptive to talking to you. I would just urge you to  
22          get to know them, to get their phone numbers, their  
23          e-mail. And if you need to talk to them about  
24          something, please contact them.

25          And I would just thank you for being here

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1        tonight, and we're going to start the program. And  
2        our first two speakers are going to be Paul Piciulo,  
3        who is the Director of the New York State Energy  
4        Research and Development Authority, NYSERDA -- I think  
5        you'll probably be hearing that a lot. He's the  
6        Director of the West Valley Site Management Program.  
7        He's been with NYSERDA since 1991.

8                    And I'll ask Paul to come up, do his  
9        presentation, and then we'll have Alice from the  
10       Department of Energy. Okay? Alice Williams. Paul?

11                   MR. PICIULO:        Thanks, Chip.        Hi,  
12       everybody. Welcome. And I guess to kick off a pretty  
13       good series of presentations, and I hope it's very  
14       informative to everyone.

15                   Kind of a goal that I was -- what we want  
16       to do, as Chip said, is to give you an idea of what  
17       NYSERDA's roles and responsibilities are at West  
18       Valley. And the picture here gives you an idea of the  
19       3,300-acre site that's owned by New York State.  
20       NYSERDA holds the title on behalf of the State, holds  
21       the title to that property.

22                   Can you change it? Looks like that.

23                   (Laughter.)

24                   It's bigger now, and it's smaller.

25                   (Laughter.)

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1 Any questions?

2 (Laughter.)

3 What the next slide is going to show is a  
4 map view of the 3,300-acre site. This is the NYSEERDA-  
5 owned property boundary. There are two major things  
6 that go on at this site -- the West Valley  
7 demonstration project, okay, which DOE has a lead  
8 role, and Alice Williams will talk to you in more  
9 detail about DOE's roles and responsibilities for the  
10 demonstration project.

11 NYSEERDA's responsibility in the  
12 demonstration project is to be a partner with DOE. We  
13 pay 10 percent of the cost of the project. We have  
14 some working relationships with DOE to provide  
15 consultation and advice from what New York State's  
16 point of view is on the project and what's going on.

17 The other major activity is a shutdown  
18 low-level waste disposal site, the state-licensed  
19 disposal area, and NYSEERDA has 100 percent  
20 responsibility for the day-to-day management and  
21 monitoring of that site and responsibility for the  
22 closure of that site.

23 One other point that -- and you'll hear it  
24 a lot through I think the -- through tonight, this  
25 3,300-acre site is under license with the Nuclear

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1 Regulatory Commission, except for this little island  
2 in the middle, this little island of the state-  
3 licensed disposal area, which I'll explain later is  
4 permitted with New York State DEC.

5 So NYSERDA is the owner on that license,  
6 and currently that license is held in abeyance. And  
7 we'll talk a little bit about that on the next slide.

8 I have a little bit of history, kind of  
9 the saying goes, if you -- in order to know where  
10 you're going, you need to understand where you've  
11 been. And, basically, how did this site get here? In  
12 1966 -- or '62 to '66, Nuclear Fuel Services, under  
13 contract, it had a license with NRC, constructed the  
14 facility.

15 This was all part of the -- at the time  
16 the Atoms for Peace Program, and the Federal  
17 Government had incentives to try to get the bad guys  
18 of the nuclear fuel process to get that  
19 commercialized. And NFS started to build that.  
20 Between '66 and '72, they processed over 640 metric  
21 tons, which is a lot of waste, and it came from  
22 federal sources and some came from commercial sources.

23 In 1972, NFS shut the operation down to  
24 make some modifications, to expand -- they weren't  
25 making enough money at the rate they were going. If

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1 they made it bigger, they'd make more money -- and to  
2 deal with some of the change in regulations at the  
3 time.

4 That became too costly for them to do  
5 that, and so they decided to withdraw from this  
6 business. And at the same time, in the late '70s --  
7 and I can see a lot of us remember the '70s -- the  
8 government was concerned about a nuclear  
9 proliferation. And so the government was looking at  
10 putting -- shutting down or not doing any more nuclear  
11 fuel reprocessing -- better way to control this.

12 So NFS wanted to get out of the business,  
13 because it was going to be too costly. They weren't  
14 going to be able to do it anyway, legally, in this  
15 country. And they told New York that they were going  
16 to turn the site back over to New York when their  
17 lease expired in 1980 or '81.

18 So with that, there was a series of  
19 studies. Well, what do you do about this? There were  
20 600,000 gallons of high-level waste on the site.  
21 There's disposal areas with spent nuclear fuel buried.  
22 There's contamination on the surface of the property.  
23 Through a whole series of actions -- by 1980,  
24 President Carter signed the West Valley Demonstration  
25 Project Act, and that's what got the West Valley

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1 demonstration project going.

2 And two things happened in 1981 -- we  
3 entered into a cooperative agreement with the  
4 Department of Energy as to how that project would be  
5 carried out. And the NRC, which by that time it went  
6 from the Atomic Energy Commission to the Nuclear  
7 Regulatory Commission, they put our license in  
8 abeyance and it's been in abeyance since that time in  
9 order for the Department of Energy to come on and do  
10 or complete the West Valley demonstration project.  
11 And I also will tell you about that in a minute.

12 I have one more piece to give you a little  
13 bit more detail on our responsibilities for the state-  
14 licensed disposal area. While NFS was building the  
15 facility, between '62 and '66, they said let's start  
16 doing some work and making some money, and they  
17 decided to get into the low-level waste disposal  
18 business.

19 And they constructed a low-level waste  
20 disposal facility that operated from 1963 to 1975, and  
21 it received waste -- some waste from the reprocessing  
22 facility, some waste from other areas, reactors,  
23 federal facilities, hospitals, universities -- for  
24 disposal there.

25 It's not part of the demonstration

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1 project. It was shut down in '75. DOE came onsite,  
2 as I said before, in 1981. NFS was still onsite,  
3 still managing the SDA, and, in 1983, NYSERDA took  
4 over -- assumed the regulatory responsibility for the  
5 SDA, and we have that.

6 Who our regulators are -- we have a  
7 radioactive materials license, just to possess  
8 radioactive material and to provide safety -- the  
9 safety regulations for our workers, and that's with  
10 the New York State Department of Labor.

11 The New York State Department of  
12 Environmental Conservation, who you will hear from  
13 later, they hold the major permits for our monitoring  
14 and maintenance program right now, the Part 380  
15 program. We have RCRA permits for hazardous waste  
16 that is stored onsite, a consent order for some of the  
17 actions that we've taken.

18 The picture shows the polymer cover that  
19 we put on. It was put on to help manage water  
20 infiltration which had been a problem for the site,  
21 and that's why we shut down.

22 It's with New York State DEC that we'll,  
23 you know, have to work out the long-term management  
24 closure of that facility. They will play a major role  
25 in that, and that will be with us.

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1           So with that, I want to conclude. The  
2           only thing I want to say about tonight is that this is  
3           really a great occasion, those that are here. It's  
4           great that the policy statement is final, and NRC is  
5           here to talk about it.

6           But even bigger is that the NRC and EPA,  
7           NYSDEC, and Department of Health have gotten together  
8           to kind of help outline, what are all the requirements  
9           for closing facilities? Because there are a number,  
10          and you'll see that tonight. So I want to thank  
11          everybody, thank them all for being here.

12          And one last item of just format, as Chip  
13          said, for comments -- we have some comments, and my  
14          staff will probably make comments, or myself, during  
15          the conversation part, but we have submitted them and  
16          they're on the table to be entered into the record.

17          So wit that, thank you, Chip.

18          MR. CAMERON: Okay. Thank you very much,  
19          Paul. And as I mentioned, we will be bringing Paul  
20          and Alice back later on in the evening for general  
21          question and answer.

22          And now it is my pleasure to introduce  
23          Alice Williams of the Department of Energy. Alice is  
24          the Director of the West Valley Demonstration Project.  
25          She has been here for about a year and a half. And

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1 before she came to West Valley she was at the  
2 Department of Energy's Idaho Operations Office, and  
3 there she was responsible for a variety of things,  
4 including high-level waste management, spent fuel  
5 transportation, shipments, and also environmental  
6 restoration generally.

7 And, Alice, I'll just turn it over to you.

8 MS. WILLIAMS: Thank you, Chip.

9 Let's see, can everybody hear me?  
10 Especially the transcriptionist.

11 What I will say tonight is very brief.  
12 And for those of you who've joined us in the previous  
13 meetings for the last two days, you've probably heard  
14 bits and pieces of this all over the place, but bear  
15 with me as I say everything in one timeframe here this  
16 evening.

17 As Paul mentioned, this site is owned by  
18 the State of New York. And in my perspective, the  
19 West Valley demonstration project, which was signed in  
20 1980, is a very, very unique piece of legislation from  
21 the Department's point of view. And it is very  
22 specific as to what the Department is going to be  
23 doing and what we have been doing for the past 20-some  
24 odd years.

25 First of all, the Act tells us that we

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1 will solidify high-level radioactive waste, and that's  
2 part of the mission that is just about completed. We  
3 have a few months more to go on that.

4 We are to develop containers suitable for  
5 permanent disposal, and, obviously, that had to be  
6 done before we poured the high-level waste into those  
7 canisters. We are to transport the solidified waste  
8 to a permanent federal repository, and, when there is  
9 a federal repository that is open, indeed, that will  
10 be something we do.

11 We are to dispose of the low-level  
12 radioactive waste that we have actually made in the  
13 process of getting rid of the high-level waste, and we  
14 have had some successful disposal campaigns of that so  
15 far and are committed to disposing of all that waste  
16 off-site.

17 And, finally, we are to decontaminate and  
18 decommission the tanks and the facilities and the  
19 other things that we've used in the process of the  
20 decommissioning.

21 Now, because this Act was so unique, and  
22 because, as we've all said for the past two days, the  
23 West Valley demonstration project is, in and of  
24 itself, sort of a one-of-a-kind thing, we had to  
25 figure out how we were going to implement the Act.

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1 And that took about a year after the Act was first  
2 signed.

3 And we entered into a cooperative  
4 agreement between DOE and NYSERDA that essentially  
5 said how we would work things together with the two  
6 entities. There was a supplemental agreement that was  
7 then executed in '91 that addressed predominantly the  
8 EIS activities.

9 As Paul mentioned, the NRC license was  
10 amended, and that went into abeyance so that the  
11 Department could come onsite and do some work that the  
12 Act told us that we needed to do. And another  
13 important part is is that 90 percent of this is funded  
14 by the Federal Government; 10 percent by the part of  
15 the state.

16 And also it's not important to this  
17 particular audience, there is something I do want to  
18 stress here. And sometimes people think that the 10  
19 percent that the State of New York pays is in-kind,  
20 and that is not the case. It is a very careful  
21 accounting, and it is something where absolutely the  
22 State of New York does pay 10 percent of this project.

23 In '91, DOE and the NRC signed a  
24 Memorandum -- I'm sorry. Did I say '91? If I did, I  
25 meant to say 1981. The NRC and DOE signed a

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1 Memorandum of Understanding to outline respective  
2 responsibilities.

3 And I'll talk about this in the next  
4 slide, but this was necessary because this was a new  
5 kind of relationship between the Federal Government  
6 and the NRC because we were not a licensee, and they  
7 are not exactly our regulator.

8 In 1982, DOE assumed control of the  
9 reprocessing facilities, and the contractor for the  
10 project was WVNS, and they have remained a partner in  
11 this contract since those beginning days.

12 Now, I mentioned I wanted to spend a  
13 little bit of time about that Memorandum of  
14 Understanding with the NRC. First of all, NRC  
15 Region I, and that's the region that is out of Queen  
16 of Prussia -- or King of Prussia, Pennsylvania,  
17 provides quarterly -- it wasn't that funny.

18 (Laughter.)

19 The record should show King of Prussia,  
20 please.

21 (Laughter.)

22 The NRC provides quarterly monitoring  
23 visits. Now, and the reason they are monitoring  
24 visits is because, as I mentioned, this is not a  
25 licensee-regulator relationship. And those quarterly

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1 monitoring visits have been very, very helpful to the  
2 project.

3 In many ways, they are conducted like an  
4 inspection, but the NRC cannot levy fines or write  
5 violations against us. But it is still a very much  
6 evaluated process for it.

7 In 1991, NRC became a cooperating agency  
8 in the EIS process. And, again, that is something  
9 that is very important to us.

10 And one of the things that the Act was  
11 very specific about was -- and I'm going to read this  
12 verbatim -- that "In accordance with such requirements  
13 as the Commission may prescribe," and those  
14 requirements are what it is that we must decommission  
15 the project to.

16 And those criteria were defined  
17 February 1st of 2002, and is essentially what we've  
18 been about here for the last two days as the NRC has  
19 worked with us and the stakeholders about what those  
20 criteria are.

21 Now, moving on to a little bit about how  
22 we are regulated, and I'm going to walk through these  
23 just the way regulators do, and that's air, water, and  
24 waste.

25 First of all, with regards to air, the

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1 radiological emissions from the site are regulated  
2 through EPA. And the toxic air emissions -- those are  
3 the emissions that are what we call non-rad or non-  
4 radiological -- are regulated through the New York  
5 State Department of Environmental Conservation, which  
6 I from now on will just talk to about as NYSDEC.

7 Water -- the storm water and the non-  
8 radiological point source discharges to surface water  
9 -- our regulator is NYSDEC. And the wetlands, Army  
10 Corps of Engineers in conjunction with NYSDEC. And  
11 drinking water is Department of Health, New York  
12 State.

13 On the waste side, we have solid waste,  
14 which is the non-radiological waste, hazardous waste,  
15 and then the mixed radiological waste. With regards  
16 to solid waste, DEC. And then, with the radiological  
17 hazardous waste, or, as I said just a minute ago, the  
18 mixed waste, the treatment and storage and disposal is  
19 regulated through the EPA program, which has been  
20 delegated to NYSDEC.

21 And with that, we talked about the  
22 Resource Conservation and Recovery Act, or RCRA for  
23 short, corrective action order. And also, the Federal  
24 Facilities Compliance Act consent order for the mixed  
25 waste treatment.

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1           Now, we also have our own DOE orders, as  
2           we have taken over operational control of the site,  
3           which was part of the Act. We comply with all of the  
4           DOE orders, and that includes the series for  
5           radiological waste management operations as well as  
6           the environmental safety and health and quality  
7           assurance.

8           And with regards to these, we have a -- we  
9           are required to have an environmental monitoring  
10          program. That has been going on since our very  
11          beginning here, and we have over 20 years of data in  
12          our environmental reports. And we continue not only  
13          correcting but evaluating that.

14          In closing, I want to talk a little bit  
15          about the project completion. Clearly, nobody is  
16          going to argue the fact that a great deal has been  
17          done here, and we have been very, very successful with  
18          being able to solidify the high-level waste.

19          However, we still have some things to do  
20          at the project. There is decontamination that is  
21          ongoing, and that must continue. And also, as I  
22          talked about earlier, we have a great deal of low-  
23          level and transuranic waste that must be disposed of  
24          offsite.

25          Regulatory involvement is absolutely

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1 essential, and that -- some of these interfaces are  
2 unique, but that is something that we are committed to  
3 make work because it is our job to see that we comply  
4 with all aspects of the Act.

5 And with that, I will close my comments  
6 and turn it back to Chip.

7 MR. CAMERON: Okay. Thank you very much,  
8 Alice.

9 Our next set of speakers -- and then we  
10 will be going out to you for discussion -- are from  
11 the Nuclear Regulatory Commission, and we're first  
12 going to hear from Larry Camper.

13 Larry is the Branch Chief of the  
14 Decommissioning Branch in our Office of Nuclear  
15 Materials Safety and Safeguards, and Larry's branch,  
16 his group of people, is responsible for the evaluation  
17 of all decommissioning activities at the NRC. And  
18 before that, Larry was branch chief in the regulation  
19 of industrial and medical uses.

20 And after Larry is done talking about NRC  
21 responsibilities generally, we're going to go to Chad  
22 Glenn, who I'll introduce now, who is on Larry's  
23 staff. He is the Project Manager for West Valley for  
24 the NRC, and before that he was one of the NRC's  
25 onsite representatives at the Yucca Mountain site in

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1 Nevada.

2 And they will be assisted in the question  
3 and answer by their legal counsel, Jim Lieberman.

4 Larry?

5 MR. CAMPER: Thank you, Chip.

6 Good evening. Good turnout. Glad to see  
7 that. This is the third meeting since last night in  
8 our meeting marathon. Many of you were at those  
9 meetings. Some of you were not. For those of you who  
10 have heard a lot of what we're going to be saying,  
11 bear with us. For those of you who have not,  
12 hopefully it will be something that you'll find  
13 interesting and knew.

14 Last evening we did meet with the Citizen  
15 Task Force to explain our decommissioning criteria set  
16 forth in the policy statement, the final policy  
17 statement, and to answer the questions that the CTF  
18 had.

19 This morning we met here with DOE,  
20 NYSERDA, and the other regulators involved with the  
21 site, to discuss what we heard last night, what were  
22 the lessons learned, what were the things that we  
23 heard the first time, or things we wanted to talk  
24 about more as regulators, and we spent a lot of time  
25 focusing upon the path forward, what comes next.

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1 I want to draw your attention to the  
2 displays around the room. There are several; the NRC  
3 has several here. And particularly what I want to  
4 point out is that we have over here an example of a  
5 site being decommissioned. NRC does a lot of  
6 decommissioning. We have 30 materials sites  
7 undergoing decommissioning. We have four fuel cycle  
8 sites undergoing decommissioning. We have 17 power  
9 reactors.

10 So there's a lot of decommissioning going  
11 on, and I think it's important for you, the public, to  
12 know that. We have a great deal of experience in  
13 decommissioning, and we will bring that experience to  
14 bear at West Valley.

15 You're going to hear some acronyms used  
16 tonight in our presentations. I apologize for that.  
17 As scientists and technical folks, we have a tendency  
18 to do that. But we did provide a list of the acronyms  
19 for you. So if it becomes too much, you can go get  
20 the list and get some relief.

21 Next slide, please.

22 So what are our goals for this evening?  
23 We have three primary goals. I want to explain NRC's  
24 roles and responsibilities for the site as a  
25 regulator, which we summarized in the regulator's

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1 communications plan that was published the 27th of  
2 March of this year.

3 I want to explain and clarify the final  
4 policy statement, which was published on the 1st of  
5 February of this year. And, above all, I want to  
6 address your concerns and questions and do the best we  
7 can to clarify the contents of that policy statement.

8 You've heard a brief explanation by Alice  
9 and Paul of the roles and responsibilities of DOE and  
10 NYSERDA for this site. You're now going to hear about  
11 the NRC roles and responsibilities for the site. And  
12 then later you're going to hear from the other  
13 regulators, the other New York State regulators, and  
14 the EPA regarding their roles and responsibilities.

15 And hopefully, as Chip indicated earlier,  
16 when it's all said and done, you'll have a pretty good  
17 perspective of our various roles and responsibilities,  
18 sort of a holistic viewpoint of the site if you will.

19 I want to make a brief comment about the  
20 regulator's communications plan. We did put that out  
21 recently. It is available on our web page at NRC.  
22 And what we attempted to do in that regulator's  
23 communications plan is to set forth in a snapshot, in  
24 a hopefully easy way to read, the various roles and  
25 responsibilities that we have.

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1           That plan contains a matrix that  
2 identifies our expectations that are in front of us  
3 for the site, and we hope that that will aid DOE and  
4 NYSERDA and members of the public in understanding  
5 what our expectations are for that site.

6           It is not a consensus document, because we  
7 have different laws and statutes that we operate  
8 under. But it does set forth those things which we  
9 agree upon in principle, and it sets forth our  
10 specific requirements. So if you haven't seen it, I  
11 would draw your attention to it. It's a very useful  
12 document.

13           Next slide, please.

14           So what are NRC's roles and  
15 responsibilities at West Valley? They derive from  
16 three different laws -- the Atomic Energy Act of 1954.  
17 In this Act, the NRC has a broad spectrum of  
18 responsibilities as an independent regulatory agency.

19           With regards to this site, the AEC, and  
20 then the NRC, issued a license to NFS to reprocess  
21 spent nuclear fuel. As Paul mentioned in his  
22 comments, the site operated from 1966 to 1980. That's  
23 a 10 CFR Part 50 license.

24           The license was suspended. It was put  
25 into abeyance to allow DOE to carry out its

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1 responsibilities in executing the West Valley  
2 Demonstration Project Act. NYSERDA now holds that  
3 suspended license. We have continued to carry out our  
4 inspection activities at the site through a  
5 relationship interaction with the Department of  
6 Energy.

7 Following completion of the West Valley  
8 demonstration project, that license will be  
9 reactivated. Should NYSERDA choose to terminate that  
10 license in due course, then the NRC would review the  
11 termination documents submitted by NYSERDA and conduct  
12 a separate environmental review to determine if that  
13 termination process satisfies the decommissioning  
14 criteria in our license termination work.

15 Next slide, please.

16 The second act is the West Valley  
17 Demonstration Project Act. We have four key functions  
18 under that Act. First, is to prescribe the  
19 decommissioning criteria for the site. We've done  
20 that in the policy statement, which you're going to  
21 hear more about in a few minutes.

22 We review and consult with the Department  
23 of Energy on their various activities and plans for  
24 the site. We monitor the activities of DOE. We  
25 conduct special activities, as we would for any other

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1 -- if it were a licensee involved, and we do this  
2 through the agreement that Alice cited in her  
3 comments.

4 And then, finally, NRC is charged with  
5 determining that the preferred alternative meets the  
6 decommissioning criteria as set forth in our policy  
7 statement. And the preferred alternative will be  
8 articulated in the environmental impact statement that  
9 DOE has the lead in preparing and that NYSERDA the NRC  
10 and the EPA are cooperating agencies on.

11 Next slide, please.

12 The third role is the National  
13 Environmental Policy Act called NEPA. We are a  
14 cooperating agency for the environmental impact  
15 statement on the decommissioning at the site. There  
16 are two environmental impact statements being  
17 developed there, one dealing with waste management and  
18 one dealing with decommissioning. That was referred  
19 to as EIS number 2. We're a cooperating agency on  
20 that environmental impact statement.

21 We ensure that the decommissioning  
22 criteria and the solutions to the decommissioning for  
23 the site are subject to an adequate environmental  
24 analysis.

25 The license termination rule, which is

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1 being brought to bear at this site by the NRC,  
2 included a generic environmental impact statement  
3 before the Act was put into place in 1996. In the  
4 course of conducting that environmental impact  
5 statement, the generic environmental impact statement,  
6 we did evaluate a number of complex sites, such as  
7 nuclear power reactors and fuel cycle facilities. And  
8 we believe what we learned and what we conducted in  
9 that GEIS has application at the site for West Valley.

10 The proposed alternatives to decommission  
11 West Valley will undergo a site-specific analysis.  
12 You're going to hear us talk several times about the  
13 ongoing development of an environmental impact  
14 statement, which we are a cooperating agency for. So  
15 I want you to understand that we have the generic  
16 environmental impact statement associated with the  
17 license termination rule itself, and a site-specific  
18 analysis that's going on at the West Valley site.

19 Termination of the NRC license by NYSERDA  
20 will undergo an environmental review. What we're  
21 trying to do, though, to be efficient is to maximize  
22 the opportunities, to link the environmental impact  
23 statement that's being developed right now, that  
24 NYSERDA is a party to as a cooperating agency, and the  
25 effort that NYSERDA will ultimately bring to bear

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1 should it decide to terminate the license.

2 We spent a lot of time talking about that  
3 in our meeting this morning, and we think that's a  
4 very efficient thing to do. The NRC believes that we  
5 can rely upon the environmental impact statement  
6 that's being developed right now in reaching our  
7 decision. But should we reach a conclusion that we  
8 can't do that, we have the authority -- and could do  
9 -- our own environmental impact statement. We would  
10 prefer not to do that, simply in the interest of time,  
11 efficiency, and cost.

12 Next slide, please.

13 Interfacing with stakeholders is an  
14 important function at any site. Public outreach is an  
15 important function at any site undergoing  
16 decommissioning, and West Valley is certainly no  
17 exception to that rule.

18 We need to be aware as regulators of the  
19 concerns and the issues that you as stakeholders have.  
20 All of you are stakeholders. The regulators are  
21 stakeholders. The citizens who live here are  
22 stakeholders. DOE and NYSERDA, we're all  
23 stakeholders. We want to be aware of your concerns to  
24 the extent that we can, and as practical to address  
25 them.

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1           The EIS will be a key vehicle in  
2           addressing your concerns. It will afford an  
3           opportunity for public comment, and it will be an  
4           excellent opportunity for you to weigh in as  
5           stakeholders in the ultimate outcome of how the site  
6           is decommissioned as set forth in the environmental  
7           impact statement and the preferred alternative.

8           Next slide, please.

9           NRC has four performance goals which are  
10          embodied within our mission statement and our plan.  
11          They are to maintain safety; increase public  
12          confidence; make efficient, effective, and realistic  
13          decisions; and reduce unnecessary regulatory burden.  
14          I want to emphasize that we take these four program  
15          goals very seriously.

16          We are driven by these principles as an  
17          independent regulator. And we will strive to bring  
18          each and every one of them to bear as we carry out our  
19          responsibilities for the decommissioning of West  
20          Valley.

21          All four are important, but none is more  
22          important than maintaining safety. It's our mission,  
23          it's what we're about, and I want to assure you we  
24          take it very, very seriously.

25          Next slide, please.

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1           Now, regarding the decommissioning  
2 criteria itself, we've had several key events along  
3 the way as we developed the policy statement. The  
4 first was a Commission public meeting that took place  
5 in January of 1999. It was a public meeting of the  
6 Commission in which the staff briefed the Commission  
7 on the then draft policy statement. DOE and NYSERDA,  
8 as well as representatives of the Citizen Task Force,  
9 participated in that public Commission meeting.

10           We then published the draft policy  
11 statement in December of 1999. Twenty-eight  
12 organizations or individuals provided comments on the  
13 draft policy statement. There were more than 200  
14 comments provided on the draft policy statement.  
15 Reaction was generally favorable, but there were some  
16 concerns expressed, of course.

17           We then held a meeting at this same site  
18 in January of 2000 to discuss with you and present the  
19 draft policy statement. I recall it being a lengthy,  
20 lively at times, meeting, and a very constructive  
21 meeting -- so constructive, in fact, that we took home  
22 a very clear message from the participants that night,  
23 that you wanted more time to comment on the draft  
24 policy statement.

25           As a result of that, we took that message

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1 back to the Commission, and the Commission did, in  
2 fact, extend the public comment period time.

3 The final policy statement, which we're  
4 here to talk to you about tonight, that was published  
5 on the 1st of February, continues to prescribe the  
6 license termination rule as the decommissioning  
7 criteria for the West Valley site. It addresses the  
8 waste incidental to reprocessing issue. And, in fact,  
9 this is, as Alice pointed out, a unique and complex  
10 site.

11 Next slide, please.

12 So now that we have a final policy  
13 statement, it's about implementing that policy  
14 statement. Our expectation is that DOE and, in turn,  
15 NYSERDA will do everything that is economically and  
16 technically feasible to clean up the site and meet the  
17 dose standards of the license termination rule.

18 The environmental impact statement will  
19 need to be a comprehensive document considering the  
20 various alternatives for the site, and ultimately  
21 explain or justify the preferred alternative and how  
22 it, in fact, meets the criteria in the final policy  
23 statement.

24 Make no doubt about it -- we do face  
25 challenges at this site. Meeting the dose standard,

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1 partial site release is a possibility at this site,  
2 and possible continuation of the license at that site  
3 is a possibility.

4 The final policy statement prescribed in  
5 the LTR, as I said, while recognizing the complexity  
6 of the West Valley site -- and that flexibility may be  
7 needed to determine a practical solution to the site  
8 while ensuring that public health and safety is met.

9 I'd like to ask us to avoid speculation,  
10 and by that I mean guessing what the outline will be,  
11 jumping to the conclusion that the flexibility allowed  
12 by the policy statement will, in fact, be necessary at  
13 this site. We now have the final policy statement  
14 that prescribes the license termination rule as a dose  
15 standard at this site.

16 DOE has indicated to us that they are  
17 committed to meeting that dose standard. But we now  
18 need to let the process play out. The environmental  
19 impact statement in the development of alternatives is  
20 where we should now focus our efforts, all of us, you  
21 the stakeholders, the Citizen Task Force, us as  
22 regulators and responsible parties for remediating  
23 this site. That is where we can make the most  
24 progress as we move forward.

25 Next slide, please.

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1           As we move toward a discussion of the  
2           license termination rule and the policy statement for  
3           West Valley, I want to clarify a few concepts that are  
4           set forth in the license termination rule. Chad and  
5           I discussed this, and we think it will make his  
6           presentation easier as he presents some of the  
7           concepts set forth in the policy statement.

8           First, I want to point out that the  
9           license termination rule is a risk-informed  
10          performance-based rule that sets forth a range of dose  
11          criteria to be brought to bear. It contains a dose  
12          standard -- in this case, 25 millirem and ALARA --  
13          that is designed to protect public health and safety.

14          There are three possibilities that exist  
15          within the license termination rule -- the first being  
16          unrestricted release to a dose standard of 25 millirem  
17          and ALARA -- ALARA meaning as low as reasonably  
18          achievable. There is a restricted release pathway, in  
19          which institutional controls are in place to ensure  
20          that that dose standard is met and maintained.

21          Again, the dose standard for restricted  
22          release is 25 millirem and ALARA. However, it has a  
23          provision that should those institutional controls  
24          fail, should the fences and the security monitoring  
25          and the other things that are put in place to control

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1 access to the site to prevent intruders from coming  
2 into the site, should all of them fail, safety caps  
3 require that the dose not exceed 100 millirem, and  
4 under certain conditions 500 millirem.

5 The third pathway is an alternate criteria  
6 pathway. The alternate criteria pathway allows for a  
7 dose possibility of on the order of 100 millirem, not  
8 unlikely to exceed 100 millirem, and it requires  
9 approval by the Commission, coordination with the EPA,  
10 and public participation should that pathway be  
11 pursued.

12 Any other flexibility that might be  
13 necessary for any site undergoing decommissioning  
14 criteria following the license termination rule will  
15 be subject to the same scrutiny as the alternate  
16 criteria pathway.

17 Next slide, please.

18 License termination rule is designed to  
19 protect a critically exposed individual. It requires  
20 25 millirem total effective dose equivalent. It's got  
21 to be an average member of a critically exposed group.  
22 All pathways must be considered. And the period of  
23 performance in the license termination rule is 1,000  
24 years.

25 Now, what's a millirem? What does that

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1 mean? A millirem is a unit of radiation exposure that  
2 considers biological effect, the impact it might have  
3 on our body. It -- as far as the critically exposed  
4 person is concerned, we use a very conservative  
5 scenario.

6 The most conservative scenario in our  
7 guidance is what we call the resident farmer scenario.  
8 Literally, someone would come on to a site after it  
9 has been decommissioned and the license has been  
10 terminated.

11 They would build a house, dig a basement,  
12 grow a garden, eat the crops, drink the water, and  
13 from all possible pathways of ingestion -- inhalation  
14 of dust, drinking the water, eating the food -- all of  
15 those pathways considered, over a period of 1,000  
16 years, the licensee -- or in this case DOE and NYSERDA  
17 -- must demonstrate that the dose criteria was not  
18 exceeded. A very, very conservative approach designed  
19 to ensure a substantial degree of public health and  
20 safety.

21 Next slide, please.

22 Well, how much is 25 millirem? I mean,  
23 let's try to put this into perspective. Depending  
24 upon where you live in the United States, the  
25 background radiation ranges between about 200 and 400

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1 millirem -- 200 to 400 millirem per year background  
2 radiation.

3 If you look in our regulations at Part 20,  
4 they require that no member of the public can receive  
5 more than 100 millirem from an operating facility,  
6 from a currently licensed facility. If you get in an  
7 airplane and you fly across the United States from New  
8 York to Los Angeles, you'll pick up about three to  
9 four millirem of exposure.

10 If you go get a chest X-ray, which most of  
11 us do occasionally as part of our physicals, you'll  
12 pick up about 20 millirem of exposure to the chest  
13 area. And the X-ray being passed through your body,  
14 you'll pick up about eight millirem whole body  
15 exposure.

16 Next slide, please.

17 And then, finally trying to begin to put  
18 it into perspective, radiation is all around us. It's  
19 part of life. We contain radiation ourselves. Radon  
20 gas, we've heard a lot about radon gas in the last few  
21 years, some numbers are presented. Terrestrial  
22 radiation, internal radiation is about 30 millirem per  
23 year because of the trace levels of radionuclides in  
24 our body. Of course, medical procedures, we all have  
25 those from time to time.

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1           And I hope that by seeing these numbers  
2           and seeing these other sources of exposures it will  
3           put it at least into a reasonable context what we mean  
4           when we talk about 25 millirem and ALARA.

5           The dose standard in the license  
6           termination rule and, therefore, prescribed in the  
7           policy statement recognizes that there may be other  
8           pathways of exposure, and that's why the conservative  
9           values were chosen in the license termination rule and  
10          in the policy statement.

11          I'd like to conclude my comments by  
12          picking up on a point that Paul made in his remarks.  
13          We believe that we are now in a significant milestone  
14          in the process of decommissioning this site. We now  
15          have the regulatory infrastructure that DOE and  
16          NYSERDA need to proceed to continue their work.

17          The regulatory infrastructure is contained  
18          in the policy statement, which was published recently  
19          and we're going to be telling you about -- more about  
20          in a moment, and in the contents of the regulator's  
21          communications plan, which sets forth our expectation.  
22          I don't think there's any question now about what the  
23          regulatory expectations are for the site.

24          And I want to encourage us to look ahead  
25          and to continue to make progress. We talked a lot in

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1 our meeting this morning about what comes next, and I  
2 want to encourage all of us, and particularly the  
3 members of the Citizen Task Force, particularly the  
4 local stakeholders, to focus our attentions on the  
5 steps that the regulatory agencies and DOE and NYSERDA  
6 will be taking next, and, in particular, on the  
7 development of the environmental impact statement and  
8 your opportunity to comment on it.

9 I appreciate your attention, and will look  
10 forward later to answering your questions.

11 Thank you.

12 MR. CAMERON: Thanks, Larry.

13 Let's complete the NRC picture with a  
14 presentation by Chad Glenn on the NRC's policy  
15 statement, and then we'll go out and hear from you.

16 MR. GLENN: My name is Chad Glenn. I work  
17 for the NRC in the Decommissioning Branch. Thanks for  
18 coming tonight. Appreciate your time.

19 What I'd like to talk about tonight is the  
20 Commission's final policy statement on decommissioning  
21 criteria for the West Valley demonstration project.

22 Next slide, please.

23 I'm going to touch on the license  
24 termination rule, the decommissioning criteria for the  
25 West Valley demonstration project, as well as the rest

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1 of the site.

2 I'm going to talk a little bit about  
3 incidental waste, touch on previously authorized  
4 burials at the site, and then talk about some  
5 environmental analyses.

6 Next slide, please.

7 The license termination rule is NRC's  
8 standard decommissioning criteria for terminating all  
9 NRC licenses. Whether they be reactors, fuel cycle  
10 facilities, this is our criteria.

11 As Larry noted, the license termination  
12 rule provides a range of release criteria. There's  
13 release criteria for unrestricted release of a site as  
14 well as for restricted release of a site.

15 Next slide, please.

16 The obligation of the license termination  
17 rule to the West Valley demonstration project will be  
18 a two-step process. The first step, NRC has  
19 prescribed --

20 (Whereupon, at 7:55 p.m., a power outage  
21 occurred.)

22 MR. GLENN: The application of the license  
23 termination rule for the West Valley demonstration  
24 project, as we said, was a two-step process. The  
25 first step is to prescribe the license termination

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1 rule as to decommissioning criteria, and the second  
2 step is the NRC will independently evaluate the  
3 decommissioning EIS to make a determination of whether  
4 the preferred alternative satisfies the license  
5 termination rule.

6 I think it's important to note tonight  
7 that the license termination rule is the  
8 decommissioning criterion for both the West Valley  
9 demonstration project as well as the rest of the site.

10 The West Valley Demonstration Project Act  
11 specifies that the NRC criteria will be used to  
12 decommission the high-level waste tanks, as well as  
13 the facilities for the solidification of high-level  
14 waste, and material and hardware used in connection  
15 with the West Valley project.

16 But the license termination rule also  
17 applies to the remainder of the site. It applies to  
18 the -- it is the decommissioning criteria for the NRC  
19 license disposal area. There's a couple of -- there's  
20 a map in the back that has these disposal areas. And  
21 adjacent to the NRC license disposal area is the state  
22 license disposal area.

23 The state license disposal area is  
24 regulated by the State of New York. They have  
25 jurisdiction over that disposal area. In the policy

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1 statement, the Commission has said that it believes  
2 that the -- both the NRC license disposal area and the  
3 state license disposal area should be decommissioned  
4 to the same standard, that being the license  
5 termination rule, in a coordinated manner.

6 The Commission believes that the early  
7 resolution of the incidental waste criteria is  
8 important to this project for decommissioning to  
9 proceed. Incidental waste is that material left in  
10 the tanks after the high-level waste has been  
11 vitrified or taken out of the tanks, removed from the  
12 tanks.

13 Therefore, the Commission has provided two  
14 criteria for incidental waste. First, that the  
15 radionuclides would be removed to the maximum extent  
16 technically and economically practical. And, second,  
17 that the waste will be managed as low-level waste.

18 Resulting calculated doses from incidental  
19 waste should be integrated with all other doses on the  
20 site, and the impacts of incidental waste should be  
21 evaluated in the decommissioning EIS.

22 I talked a little bit about previously  
23 authorized burials. In 1997, when the Commission  
24 approved the license termination rule, it required an  
25 analysis of site-specific impacts and costs in

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1 deciding whether or not to remove previously-buried  
2 waste at sites. The NDA contained previously  
3 authorized buried waste.

4 So the decommissioning EIS will need to  
5 evaluate the impacts and the costs of deciding whether  
6 or not those wastes should -- the dispositioning of  
7 those wastes.

8 As others have said, the West Valley site  
9 is a -- the decommissioning of this site is going to  
10 be complex and challenging. It's different from any  
11 other NRC decommissioning facility. In the policy  
12 statement, the Commission states that it expects all  
13 parts of the site to be decommissioned to the maximum  
14 extent technically and economically practical.

15 They also say this applies to any part of  
16 the site that remains under license. The same  
17 standard applies.

18 Determination of an NRC license will only  
19 happen if the Commission is assured that public health  
20 and safety is intact and maintained.

21 In terms of environmental analyses, the  
22 LTR does not establish new criteria. The impacts of  
23 applying the license termination rule have been  
24 previously evaluated. The LTR calls for a site-  
25 specific decommissioning decision.

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1           The DOE/NYSERDA environmental impact  
2 statement will evaluate the various different  
3 decommissioning alternatives, and they will evaluate  
4 impacts beyond 1,000 years. NRC will be using this  
5 DOE/NYSERDA environmental impact statement, relying on  
6 it to make an independent judgment as to whether or  
7 not the preferred alternative in that document  
8 satisfies the license termination rule.

9           That concludes my talk.

10          Chip, I'll turn it back over to you.

11          MR. CAMERON: Okay. I guess there is a  
12 general power outage in the neighborhood here,  
13 undetermined why, but I just want to assure you that  
14 things are safe here. There's no emergency going on.

15          So what I'd like to do, if you don't mind  
16 sitting in sort of semi-darkness, is perhaps to  
17 continue with the meeting and hope for -- that this is  
18 not a metaphor for the cleanup of the site.

19          (Laughter.)

20          Why don't we go out to you for comments.

21          Are you able to pick this up?

22          THE COURT REPORTER: Yes.

23          MR. CAMERON: Okay. You've heard a lot of  
24 material from the NRC. Are there questions/comments  
25 on the NRC presentation? Yes, sir. And if you could

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1 just give us your name for the transcript, too,  
2 please.

3 MR. TRIFIELD: Ivan Trifield.

4 MR. CAMERON: Okay.

5 MR. TRIFIELD: What's going to be the  
6 budgetary -- we have a budget in the government. How  
7 will that affect the cleanup?

8 MR. CAMERON: Good question. Larry, do  
9 you want to address budgetary --

10 MR. CAMPER: Could you repeat the  
11 question?

12 MR. CAMERON: -- implications. In other  
13 words, what are the implications for the cleanup of  
14 the site from any possible government budgetary  
15 decreases? It may be a more relevant question for  
16 later on in terms of the Department and NYSERDA. But  
17 perhaps you could say something about that now, and  
18 we'll come back and make sure we answer it in full  
19 later. Larry?

20 MR. CAMPER: Yes. Well, in terms of the  
21 decommissioning criteria that we are imposing on the  
22 site through the policy statement, the decommissioning  
23 standard is blind, if you will, to moderations or  
24 adjustments in funding.

25 It sets forth a safety standard that is

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1 expected to be met. And it is blind to budget  
2 considerations, as it should be. I think in terms of  
3 what any budgetary cuts might mean in real terms at  
4 this site I think that clearly Alice would be better  
5 positioned to answer that question than I would be.

6 MR. CAMERON: And what I'd like to do is  
7 to make sure that we hear the material from the --  
8 that you hear the material from the other regulators.  
9 Let's hold for a final answer on that question until  
10 we get done with the next panel. Okay? But we will  
11 come back to that, sir.

12 Other questions? Yes, Ray.

13 MR. VAUGHN: Yes. Ray Vaughn, CTF and  
14 West Valley Coalition. I've got a question for  
15 perhaps Larry or Jim Lieberman. Can you tell us  
16 exactly what the information about incidental waste in  
17 the license termination rule -- in other words, the  
18 final policy statement -- consists of?

19 Is it an authorization being granted by  
20 NRC to DOE to reclassify certain waste as incidental?  
21 Is it simply some friendly advice that DOE might want  
22 to go ahead and do so without -- can you give us a  
23 clear statement of exactly what that information on  
24 incidental waste is from a legal standpoint?

25 MR. CAMERON: Great. Larry? Jim? Who

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1 wants to start off on that one? And did you  
2 understand the question?

3 MR. LIEBERMAN: Yes, I did.

4 MR. CAMERON: All right.

5 MR. LIEBERMAN: The Commission is  
6 establishing criteria under the West Valley Project  
7 Demonstration Act as the license termination rule.  
8 That addresses residual material which is left at a  
9 site when the license is terminated. DOE is required  
10 to remove high-level waste from the site.

11 There has been a long-standing concept  
12 since the late '60s that certain material, which would  
13 be otherwise characterized as high-level waste, can be  
14 treated as low-level waste and not need to be disposed  
15 of in a deep geologic repository. And that material  
16 we've described as waste incidental to reprocessing or  
17 incidental waste.

18 The Commission, in the policy statement,  
19 is providing its views to the Department as to what  
20 material needs to be removed such that the remaining  
21 material can be subject to the license termination  
22 rule.

23 It's really a two-pronged approach the  
24 Commission is adopting in the discussion of incidental  
25 waste. First, from a safety point of view as to what

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1 type material would qualify as low-level waste, that's  
2 meeting the performance objectives of what we call  
3 Part 61, which is the low-level siting regulation  
4 requirements dealing with public dose, dose to  
5 workers, dose to the intruder, stability of the site.

6 Once that's met, then as Chad and Larry  
7 said, that dose is integrated with the license  
8 termination rule dose so that overall the Commission  
9 will be satisfied that there's protection by having  
10 that material left at the site.

11 MR. CAMERON: Okay. Do you have a  
12 followup on that?

13 MR. VAUGHN: Yes, for -- I want to reask  
14 the same question. The closest you came to answering  
15 my question was you said that NRC is providing its  
16 views to the Department. That still is very muddy in  
17 terms of what you've actually said in the final policy  
18 statement. Is it that you were giving legal  
19 authorization that did not formerly exist?

20 MR. LIEBERMAN: We're providing the advice  
21 to the Department as to what we think -- what the  
22 Commission thinks the criteria should be for dealing  
23 with incidental waste.

24 MR. VAUGHN: So advice that calls for the  
25 -- calling it an authorization to do something that

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1 did not formerly exist?

2 MR. LIEBERMAN: Well, it's not an  
3 authorization, but it's not that it didn't formerly  
4 exist. The Commission's view is that incidental waste  
5 is embodied in the Act implicitly in defining high-  
6 level waste.

7 MR. CAMERON: Let me ask Larry, Ray, to  
8 see if he can put it --

9 MR. CAMPER: Well, let me try to add to  
10 that if I can, Ray. It's clear when you read the  
11 policy statement that the Commission recognized that  
12 at this site it would be much more effective to step  
13 up to the plate and address the possibility of waste  
14 incidental to reprocessing.

15 We understand at this site, if you look at  
16 these tanks, that DOE has gone through the process of  
17 removing high-level waste, vitrifying that waste, and  
18 that in the grids that exist in the bottom of the tank  
19 there's a potential for there to be a small residual  
20 amount of radioactive waste, something on the order of  
21 one percent of what was originally there, perhaps even  
22 less when it's all said and done.

23 And the Commission felt, as they said in  
24 the policy statement, that we should step up and deal  
25 with this, because the melter is currently running.

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1 And when that melter shuts down, the Commission  
2 thought it was prudent to deal with this issue now  
3 rather than having DOE positioned so they must come  
4 back at some time in the future -- and/or NYSERDA --  
5 and deal with any residual waste in the bottom of  
6 those tanks, and run into an extremely costly and  
7 time-consuming scenario. And, therefore, the  
8 Commission thought it was prudent to do this.

9 It did that, in part, because of some  
10 comments that were raised during the public comment  
11 period. Now, it talks about in the policy statement  
12 addressing the criteria for waste incidentally to  
13 reprocessing, but it does also, as Jim points out, use  
14 the word "should."

15 Now, if you want to run that to ground and  
16 say "should" isn't advice, you can do that. But I  
17 think what's more important is that the Commission  
18 recognize that for this site in that tank this  
19 contingency existed and thought it was prudent to step  
20 up to the plate and address it in the policy  
21 statement.

22 MR. VAUGHN: May I just add one quick  
23 followup?

24 MR. CAMERON: Yes, one quick followup, and  
25 then I --

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1 MR. VAUGHN: After that -- did the last  
2 comment --

3 MR. CAMERON: Mary Ann, did you get that?  
4 Did you get Larry's answer?

5 THE COURT REPORTER: Yes.

6 MR. VAUGHN: Yes. Thank you.

7 MR. CAMERON: Okay. And we're operating  
8 a little bit in strange circumstances here, because  
9 the sun is going to go down.

10 (Laughter.)

11 These lights don't last -- I guess don't  
12 stay on forever. So if they don't fix the problem,  
13 we're just a little worried about people being able to  
14 get out of here safely.

15 So what I'd like to do while we still have  
16 light, in case the lights don't come back on, is to  
17 get our panel of three regulators -- the EPA, U.S.  
18 EPA, and the New York agencies -- up to at least go  
19 through their presentations for us. So at least  
20 you'll have that information if we do have to quit.

21 And I'm going to ask them to come up, but  
22 let's finish with a couple of questions on NRC.

23 Colleen? And please identify yourself for  
24 the transcript.

25 MS. GERWITZ: Colleen Gerwitz with

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1 NYSERDA. Following up on the questions Ray was  
2 asking, NYSERDA has, through the process of developing  
3 the policy statement, has written several letters  
4 stating our opinion that NRC must make the  
5 determination that waste is incidental to reprocessing  
6 at this site because the material was originally  
7 licensed by the NRC as opposed to the Department of  
8 Energy making that determination with the other  
9 facilities that are owned by the Department of Energy  
10 that are making under -- their order 445.1.

11 The policy statement was a bit unclear as  
12 to whether NRC is acknowledging that they have the  
13 responsibility to make that determination or not. And  
14 I guess I was wondering whether you could clarify  
15 that.

16 MR. CAMPER: I think I can, Colleen. When  
17 we read the policy statement, I don't think we see  
18 that lack of clarity. I think the Commission was I  
19 think forthright in pointing out that it felt that it  
20 needed to address this question of waste incidental to  
21 reprocessing, and I think that's why they -- it did,  
22 in fact, articulate their views in the policy  
23 statement.

24 Our sense of what the Commission tried to  
25 do, though, was -- on one hand was to step up and deal

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1 with this issue, prescribe criteria, but at the same  
2 time recognize that going back to 1969 the issue of  
3 incidental waste has been an issue that the Commission  
4 has provided views on. We've advised DOE at the  
5 Hanford site, at the Savannah River site, and  
6 recognizing that DOE has a role of significance at  
7 this site, has, in fact, dealt with incidental waste  
8 and the classifying of it -- I think tried to find a  
9 way to deal with it from both fronts.

10 On one hand, addressed the issue,  
11 prescribe a position, a view, and yet on the other  
12 hand recognize following a performance-based approach,  
13 giving DOE advice as to what should constitute waste  
14 incidental to reprocessing. And that's why the word  
15 "should" appears.

16 So I think it really tried to do both  
17 things.

18 MS. GERWITZ: So will NRC be approving  
19 waste incidental to reprocessing determinations at  
20 this site or not?

21 MR. LIEBERMAN: We will, because in the  
22 EIS process when we have to approve or be satisfied  
23 that the preferred alternative meets the LTR, if DOE  
24 chooses to have in their preferred alternative  
25 incidental waste, we will have to make a finding

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1 concerning that. And once we make that finding, that  
2 finding will be applicable to NYSERDA when NYSERDA  
3 gets the license back.

4 MR. CAMPER: I mean, Colleen, the  
5 Commission is explicitly clear on the fact that any  
6 dose has to be considered and factored into the total  
7 dose contribution from the site. And is Jim is  
8 pointing out, the preferred alternative would need to  
9 demonstrate that the dose standard is being met.

10 MR. CAMERON: Okay. Let's have one more.  
11 Is there one more question for NRC? And I'm going to  
12 ask Paul Giardina, Paul Merges, and Gary Baker to come  
13 up and do their presentations. We can come back to  
14 this incidental waste question -- hopefully, we've  
15 clarified it somewhat -- later on.

16 Let me see if there's anybody else out  
17 there -- does anybody have a question for the NRC on  
18 what they heard?

19 Okay. Hal, do you want to --

20 MR. BRODY: Well, just one short  
21 followup --

22 MR. CAMERON: Go ahead.

23 MR. BRODY: -- same issue. And that is,  
24 you've talked historically about the criteria that the  
25 NRC has set forth for incidental waste determinations.

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1 In your Hanford determination, you set forth three  
2 criteria, the third criteria being that the waste  
3 could not exceed Class C criteria that is set forth in  
4 Part 61. That criteria did not -- preferred criterion  
5 does not appear in your incidental waste criteria for  
6 West Valley. I'm wondering why.

7 MR. LIEBERMAN: That is correct. It  
8 doesn't appear, nor did it appear at Savannah River.  
9 When the Commission considered the incidental waste  
10 issue at Savannah River, they also dropped that  
11 criteria. And the reason why they did that is that  
12 the Commission is focusing on performance-based --  
13 risk-informed performance-based process that --  
14 they're focusing on the dose, the protection of the  
15 public.

16 And if the dose levels are met over the  
17 1,000-year term, and more when we consider the NEPR  
18 process, the Commission feels that the public will be  
19 protected, and, thus, the dose standard is really the  
20 key to making the determination.

21 MR. CAMERON: Okay. Thank you. If we get  
22 the lights back on, we'll come back for NRC. But at  
23 least I want you to hear the information from the  
24 other regulators, and I'd like to ask Paul Giardina  
25 from the United States Environmental Protection Agency

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1 to come up. Paul is the Branch Chief for the  
2 Radiation and Indoor Air Branch, and that's EPA Region  
3 2 out of New York City.

4 Paul, take it away.

5 MR. GIARDINA: Okay. Thank you very much.  
6 This has new meaning. There's no lights on.

7 (Laughter.)

8 This is actually such a relief, too,  
9 because this would have been a Powerpoint  
10 presentation. And I'm so challenged with technology  
11 that I don't have to worry about it.

12 (Laughter.)

13 What I wanted to do is be brief today, but  
14 I wanted to start with a chronology of events since  
15 EPA's most recent involvement at West Valley. I want  
16 to put some perspective here. But before I do that,  
17 I want to sort of play to your perception. I'm always  
18 reminded of -- whenever I speak in front of people of  
19 the thoughts of the German philosopher Hegel who said,  
20 "The trouble with government is when it comes to  
21 history, nobody ever learns from it."

22 And where I want to start is -- well, I  
23 want to talk about our last involvement with this  
24 site. I want to jump back to just a very simple  
25 document that was published by the EPA, and it began

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1 such as the following.

2 It says, in 1973, the New York State  
3 Department of Environmental Conservation, New York  
4 State DEC, asked the U.S. Environmental Protection  
5 Agency for assistance in determining whether  
6 radionuclides were migrating from the Nuclear Fuel  
7 Services' West Valley low-level radioactive waste  
8 burial area through subsurface to the surrounding  
9 environment.

10 That was the first sentence in a report  
11 issued in 1977 which gave recommendations to both the  
12 DEC and the New York State area on where to go with  
13 low-level waste burial and those trenches.

14 That report called Summary Report of a  
15 Low-Level Radioactive Waste Burial Site at West Valley  
16 had several authors, three of which were Jeanette Eng,  
17 who is my colleague now, and who is smart enough to  
18 bring this.

19 (Laughter.)

20 Jeanette, I would ask you to stand, but --

21 (Laughter.)

22 Michael F. Debonnas, who is literally back  
23 in New York running the Radiation and Indoor Air  
24 Branch while I am here, and myself. So our  
25 involvement goes back to 1977, a report in 1977. We

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1 checked -- the first day Jeanette was on the site was  
2 in 1976. I believe the first day I was on the site  
3 was in 1975.

4 So if history -- if nobody learns from  
5 history, then we're the most historic people. And  
6 we're determined not to set that precedent.

7 So let's go to work here. Back on  
8 May 17th, 1999, was -- we really had our last formal  
9 involvement in this process where we discussed or made  
10 public record. And at that point, we really came  
11 forward with comments on the development of the EIS.  
12 Here we were really concerned that we needed cleanup  
13 standards that might be more restrictive than the 25  
14 millirem per year that had been established by the NRC  
15 or that the NRC was using.

16 Subsequent to that, on January 10th, we  
17 also sent a letter transmitting our comments to the  
18 NRC, basically worried that the CERCLA risk range,  
19 which is one of the things that the EPA uses to  
20 measure the acceptability of a site cleanup, would not  
21 be met using the 25 millirem or the full -- or our  
22 Safe Drinking Water Act standards, which is a  
23 responsibility we'll talk about a little later.

24 Things have changed since that time. The  
25 NRC has gone a long way in codifying their

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1 methodology, their dose calculation methods, as they  
2 would be at the site. EPA has come a long way. We  
3 have gone through our formal dose calculations as we  
4 would apply them to sites such as this under CERCLA.

5 And lo and behold, some time shortly after  
6 those comments, and after we had worked the numbers,  
7 we have found that the 25 millirem dose standard that  
8 the NRC proposes for all but five radionuclides -- and  
9 none of those radionuclides would be driven at the  
10 site -- are more conservative, mind you, more  
11 conservative than those that would be calculated using  
12 the CERCLA risk range.

13 So, therefore, at that point, it became  
14 very clear to EPA -- and I think at the same time the  
15 Nuclear Regulatory Commission -- that in May 2000 I  
16 sat down at the Conference of Radiation Program  
17 Control Directors meeting, with Larry's boss, Mr. John  
18 Krieves, and we sat down and decided that it is about  
19 time that we codify hopefully all of the federal  
20 radiation safety and environmental standards into one  
21 usable document, so that an EIS could be developed.

22 So that there would be no problem, no  
23 difficulty, no ambiguity in the yardstick for which we  
24 would measure environmental compliance, radiation  
25 protection compliance, at this site.

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1           We also knew, and EPA on a regular basis  
2           meets with its state counterparts -- the State  
3           Department of Environmental Conservation, the State  
4           Department of Health -- to discuss program plans. I'm  
5           sure the NRC does the same thing, to involve our state  
6           counterparts, so that instead of having one group of  
7           federal rules we could have one comprehensive set of  
8           environmental and radiation protection standards that  
9           encompass state and federal circumstances.

10           So from May 2000 to August 2000, we went  
11           to separately discuss with DEC and the Department of  
12           Health their thoughts about buying into a process  
13           where we would come up with one set of environmental  
14           standards. The buy-in was completed quickly, and we  
15           decided that we would use the fall of 2000, and we've  
16           scheduled a series of three teleconferences, and then  
17           to follow up with a meeting, to come to an agreement  
18           on how we would proceed and where we would go.

19           In an unprecedented set of circumstances,  
20           we didn't need two of the conference calls and one of  
21           the meetings. And one and only conference call  
22           basically resulted in an agreement, which has been  
23           memorialized, is in the correspondence -- the two  
24           letters I talked about before -- and that agreement  
25           that came from that conference call are all a matter

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1 of public record. I know we have copies here, though  
2 I would advise you probably not to get up and get them  
3 right now.

4 (Laughter.)

5 Anyway, in May of 2001, the General  
6 Accounting Office issued a report which was entitled  
7 Agreement Among Agencies Responsible for West Valley  
8 is Critically Needed. Well, I'd like to think that we  
9 beat them by six months. But, anyway, that report  
10 recommended that NRC and EPA, in coordination with the  
11 state, needed to agree on how the different regulatory  
12 cleanup criteria should be applied to the site.

13 We had done that in October. Then the  
14 real goal for us was to make sure that we could get a  
15 roundtable together, explain it to the Department of  
16 Energy, and then -- and the New York State Energy  
17 Research and Development Authority -- and move forward  
18 in assuring that we had signoff by all of our agencies  
19 at the highest level. That, through July 23rd,  
20 happened -- excuse me, through the fall happened. And  
21 I might compliment both New York State Department of  
22 Environmental Conservation and Department of Health.

23 The signoffs of this came and were  
24 scheduled to occur during September of 2001, and were  
25 done in a timely fashion. In considering the other

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1 circumstances that we were involved with, I think it  
2 shows a clear dedication by both state organizations  
3 their focus on this project.

4 On July 23rd, I issued a letter to the  
5 Nuclear Regulatory Commission, which is again here,  
6 which I think really clarifies and takes a step-by-  
7 step approach of where we were with disagreements in  
8 our regulatory approaches, how they have been settled  
9 through basically a resolution of the technical  
10 nature, the models, and the basis of these, and where  
11 we have come to an agreement. And, again, that's  
12 here.

13 So, effectively, from July 23rd, 2001, and  
14 from a federal perspective, and shortly thereafter in  
15 the fall of 2001, we have put together a set of  
16 environmental and irradiation protection criteria for  
17 which, when met, will achieve a site cleanup that  
18 meets all existing environmental rules, regulations,  
19 and guidance on protection of the public health and  
20 safety.

21 We have now put that in a regulator's  
22 communication plan, which, again, Larry has referenced  
23 in previous meetings, I have talked about in previous  
24 meetings, and that's the public record. But from  
25 here, I think we want to go forward. It's April 17th,

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1 and what we are really looking to do now is to take  
2 this document and make the last transition. And  
3 that's the last -- the last transition is to get an  
4 environmental impact statement together and go  
5 forward.

6 Now, let me tell you what our roles and  
7 responsibilities are, because I think now with what  
8 we've done with our first steps in this through now,  
9 you may get a little better picture of this.

10 Under the Atomic Energy Act, EPA has one  
11 basic role, and that was to establish generally  
12 applicable environmental standards for radiation in  
13 the environment. We've done that in the area of the  
14 uranium fuel cycle, but that clearly does not look at  
15 the waste disposal area.

16 In the Clean Air Act, we have been given  
17 the authority to regulate radionuclide emissions to  
18 the air through the National Environmental -- or  
19 National Emission Standards for Hazardous Air  
20 Pollutants. The acronym is the RAD NESHAPS.

21 Now, back in the late 1980s, this rule  
22 basically focused on Department of Energy facilities.  
23 It's good to see Dr. Willis Bixby here, because at  
24 that time Dr. Bixby was the Director of the West  
25 Valley demonstration project, and at that point we

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1 came forward and presented the rule and where we were  
2 going with it.

3 There was some concern whether, since the  
4 DOE was simply an operator of the site, whether it  
5 applied. EPA made its vision clear I think at that  
6 point that we expected compliance at the site with the  
7 radionuclide emission rule, and that we believed that  
8 the reasonable expectation would be that the site  
9 would never ever be within a tenth of that rule.

10 I think that was a rather strong  
11 challenge, and I want to congratulate both the current  
12 DOE management, Alice, and Dr. Bixby, back then,  
13 because it's always been in full compliance, has  
14 always been well less than 10 percent of the dose  
15 standard. It's been a model citizen.

16 But we've regulated the clean air --  
17 through the Clean Air Act the radiological emissions  
18 from that site. It's important to realize that the  
19 levels that were controlled were the control -- the  
20 levels that presented the air emissions for all of the  
21 glass melter operations. So it was important to make  
22 sure that we were not turning one pathway into another  
23 environmental problem.

24 Another responsibility is obviously the  
25 Comprehensive Environmental Cleanup Response,

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1 Compensation and Liability Act. This is CERCLA. This  
2 is the Superfund rule. And what it basically does is  
3 it charges us with responding to releases that are an  
4 imminent risk and cleaning up sites that are on the  
5 national priority list.

6 West Valley, while not on the national  
7 priority list, still it is our goal to make sure that  
8 any other cleanups that are done meet the CERCLA risk  
9 range. I've talked about that before. The 25  
10 millirem standard that the NRC is using with ALARA  
11 certainly will achieve that.

12 And it is our vision in the EIS that the  
13 EIS will clearly portray both that and will interpret  
14 those levels in terms of risk so that the idea of  
15 clear compliance with all environmental statutes and  
16 all radiation protection statutes will be clear.

17 And since we are a cooperating agency in  
18 the environmental impact statement process -- and that  
19 brings us to our other responsibility -- and that's  
20 the National Environmental Policy Act. EPA reviews  
21 EISs for environmental quality. Or, when we are a  
22 cooperating agency, actually participates in the  
23 development of that.

24 That is our role now. We are walking a  
25 line as a regulator with regard to the air emissions,

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1 but now we also walk another line and that is in the  
2 development of the EIS process, where we'll be a  
3 cooperating agency.

4 I think our vision here is very clear --  
5 to develop a preferred alternative that protects the  
6 public health and safety with the environmental  
7 yardsticks that are now out on the table for public  
8 scrutiny. That's our challenge, our goal, and it is  
9 in the DOE's plan to have this done by 2005, and we're  
10 four-square with that. And I know the NRC is four-  
11 square with that.

12 So as the public, I think your focus now  
13 has to be on watching and being part of this process  
14 going forward, so that by 2005 preferred alternatives  
15 that meet public muster and the environmental muster  
16 is together.

17 Finally, we have some functions under the  
18 Resource Conservation and Recovery Act, RCRA. Those  
19 have been delegated to the New York State. Safe  
20 Drinking Water Act -- we've also delegated that to the  
21 state, and we'll maintain oversight. I'm sure our  
22 state program, people will talk about that.

23 I just want to emphasize what our roles  
24 are. As a cooperating agency in the development of  
25 the decommissioning EIS, we will be four-square

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1 involved in this.

2 Second of all, we believe that providing  
3 early input at West Valley to the public, the  
4 regulators, and to DOE and to NYSERDA on environmental  
5 standards is a key responsibility. We're going to  
6 keep going forward with that. And we're going to keep  
7 going forward with our oversight of state delegated  
8 programs.

9 But I want to just challenge you maybe to  
10 understand where we're coming from. We've been in  
11 this business at West Valley since before DOE was  
12 here, and we don't plan on going away. And if you --  
13 we get lights later on, there's a little poster  
14 outside that talks about determination. And it says  
15 the race isn't always won by the swiftest, but the one  
16 who keeps running.

17 EPA is going to keep running. We're going  
18 to keep running to the end. We are going to prod the  
19 process so it runs to 2005 in a timely fashion, and  
20 I've already had discussions with Alice and Paul about  
21 assuring that focus.

22 We are going to meet next month to get  
23 this process going in a satisfactory way. The NRC is  
24 going to be there, and they're probably going to want  
25 to run as fast, if not faster, than we are. Anything

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1 that happens from here on out, anything that has  
2 happened that involved the EPA in the past, is open  
3 for public comment. You can reach us. You can talk  
4 with us. We'd be glad to discuss it.

5 And now I'd like to turn this over to  
6 Chip, who is going to turn it over to our states.

7 MR. CAMERON: Thank you very much, Paul.  
8 Great presentation, and I hope that the absence of  
9 light didn't interfere with that.

10 We're going to take a short break now for  
11 about 10 minutes, because the good folks here at  
12 Ashford and the local foreman are going to get us some  
13 lights, and they just need to set up. So let's take  
14 a short break, and we're going to come back, we're  
15 going to go to Paul Merges and Gary, and then we're  
16 going to have some questions for EPA and the state  
17 regulators.

18 Thank you.

19 (Whereupon, the proceedings in the  
20 foregoing matter went off the record at  
21 8:37 p.m. and went back on the record at  
22 8:47 p.m.)

23 MR. CAMERON: We owe a debt of gratitude  
24 to the West Valley Volunteer Hose Company, and to Joe  
25 Paddy back here, who helped to get us these lights so

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1 that we can continue our meeting. And Joe, of course,  
2 I think people know is a member of the Citizen Task  
3 Force.

4 We're going to go to Paul Merges next.  
5 The NRC staff asked me to remind you, we do have  
6 something called an NRC public meeting feedback form  
7 that helps us to improve our public meetings  
8 notification for those -- for example, one of the  
9 questions is: was the meeting room well lighted?

10 (Laughter.)

11 But at any rate, if you could fill this  
12 out and leave this with us. And the original  
13 viewgraphs for Paul Merges from the Department of  
14 Environmental Conservation that were up here at the  
15 beginning were missing some comments. There is a new  
16 set up here, so please get those when you leave, so  
17 that you'll have a complete set.

18 And Paul Merges is the Director of the  
19 Bureau of Radiation at the New York State Department  
20 of Environmental Conservation, and his program is the  
21 lead radiation regulator for the West Valley state-  
22 licensed disposal area for low-level radioactive  
23 waste, as well as the lead regulator for all  
24 radiological cleanups in New York State.

25 Paul has also been involved with the

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1 Department of Environmental Conservation's RCRA  
2 corrective action program, pesticide program, and  
3 energy facility siting program. He's a graduate of  
4 Sienna College and received his Ph.D. at Rensselaer  
5 Polytechnic Institute.

6 And, finally, he's currently -- he is the  
7 Chair of the Conference of Radiation Control Program  
8 Directors, which is an organization that's comprised  
9 of all of the radiation program directors from around  
10 the United States.

11 And, Paul, with that, I'll turn it over to  
12 you.

13 MR. MERGES: Thanks, Chip. I do have a  
14 question for NRC, and that is, who is Alice Miller?

15 (Laughter.)

16 MR. CAMERON: Alice -- is there an Alice  
17 Miller here?

18 (Laughter.)

19 MR. MERGES: She was responsible for  
20 paying the bill for the electricity.

21 (Laughter.)

22 Okay. I'm Paul Merges, and I'm from DEC.  
23 I have a tie on, and it has a bunch of ducks on it in  
24 order. If you turn it around backwards, though,  
25 there's a little more chaos on the tie. I think

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1 that's what the regulators are in some regards. We  
2 have our ducks all lined up in really good shape, but  
3 -- and when we're floating on the surface very well,  
4 swimming peacefully and underneath paddling like hell  
5 to stay above the water.

6 (Laughter.)

7 With me tonight are Tim Rice, who is an  
8 environmental radiation specialist from the  
9 Department; Tim DiGiulio, an environmental engineer;  
10 and Jack Krajewski. He's an environmental geologist  
11 with the Region 9 office with West Valley here.

12 I'm going to discuss DEC's role at West  
13 Valley, and our role is two-pronged. One is  
14 protecting the environment, and the other is  
15 protecting public health and safety, which is  
16 redundant with the health departments in a way, but  
17 the humans are a part of the environment. So we keep  
18 that in mind.

19 Ensuring compliance with the applicable  
20 state regulations is one of our major goals. Working  
21 comprehensively with other -- cooperatively with other  
22 regulators, which Paul Giardina spent quite a bit of  
23 time talking about. And I have -- as an aside on  
24 that, I've watched EPA and NRC swiping at each other  
25 for years as a state regulator.

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1           And I want to be honest, I think that West  
2 Valley has been more of a cooperative effort by the  
3 federal regulators who have come together than I -- I  
4 ever expected, A; and B, than definitely I've seen on  
5 other sites in the nation. And I really hope that's  
6 a very positive sign for the future.

7           And by the way, it's not just because of  
8 9/11 either. This all took place before 9/11. And  
9 when there's a war, as you know, federal agencies come  
10 together much more, and the state agencies, and they  
11 start cooperating a lot better than they do. But the  
12 simple fact is this cooperation was going on well  
13 before that, and it didn't have much to do with 9/11.  
14 And that's a positive sign. We think it's going to  
15 last longer.

16           Part our mission is also to assure that  
17 the public is properly informed as site remediations  
18 progress. Now, we have a broad range of  
19 responsibilities. And the Department of Environmental  
20 Conservation, I mentioned earlier today, that we're  
21 probably the broadest of the regulatory agencies. And  
22 they cover the Resource Conservation and Recovery Act,  
23 radiological protection.

24           Also, as Chip mentioned, the SDA, but also  
25 we have several programs that are in the process of

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1 being delegated to the Department which do affect  
2 radiological as well as hazardous waste and other  
3 emissions from DOE facilities.

4 The Clean Air Act, as Paul Giardina  
5 mentioned, is a very significant part of that. The  
6 NESHAPs part of that is also a very, very important  
7 part for DOE facilities. Endangered species  
8 protection, the Department works closely with the  
9 Federal Fish and Wildlife Service, and it consults  
10 with them on preparation of environmental impact  
11 statements.

12 And stream protection -- the Department  
13 issues permits for any activities on or near the water  
14 bodies of the State of New York. And so any  
15 activities including the construction of culverts, or  
16 what have you, the Department has a major role in  
17 improving.

18 Wetlands, there are protected wetlands on  
19 the West Valley site. And a wetland can be as small  
20 as an acre or less if it happens to be a very  
21 significant habitat. But typically it's one hectare  
22 or more.

23 And then there are other programs which  
24 have been mentioned in the past, such as the mineral  
25 rights program -- or mineral resources, excuse me --

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1 which regulate the mining of soils, bank sands, oil  
2 and gas in New York State, which can have an impact on  
3 this facility.

4 The general scope of authority in the  
5 Department is on state-licensed disposal area. The  
6 state, through our regulation, in both DEC and the  
7 Department of Labor, is the sole radiological  
8 regulator for the state-licensed disposal area. Those  
9 regulations need to be consistent with the federal  
10 regulations under the agreement states program.

11 However, you need to understand that the  
12 state-licensed disposal area is not your typical low-  
13 level radioactive waste disposal site. It is unique  
14 in that it predated the Low-Level Waste Policy Act.  
15 Issues of classification of wastes were not on the  
16 books at the time that the low-level waste site, as  
17 most people call it at the West Valley site, was  
18 actively receiving waste.

19 And, therefore, we have what we consider  
20 non-conforming waste to the state -- to the now  
21 current Low-Level Waste Policy Act in the country.

22 The Western New York Nuclear Service  
23 Center also comes under -- I mentioned -- RCRA, Clean  
24 Air Act, Clean Water Act, authority of the Department.  
25 The permits on the ongoing activities of the SDA

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1 include the -- as Paul Piciulo mentioned, monitoring  
2 and maintenance permits, and air discharge permits.

3 The New York State passed a Low-Level  
4 Radioactive Waste Management Act in 1986. That was to  
5 create a new low-level radioactive waste disposal  
6 site. The West Valley site was the only piece of  
7 property in the entire state which was specifically  
8 excluded from the Siting Commission to be considered  
9 for disposal of any new low-level waste disposal.

10 That law applies to the New York State  
11 Siting Commission. If there was a decision to expand  
12 low-level waste by placing new low-level waste in the  
13 SDA, or an adjacent site or a near site, we would  
14 expect that that new site would have to meet all of  
15 the regulations in Parts 382 and 383, which are New  
16 York State's adoption and going way beyond those which  
17 the Nuclear Regulatory Commission adopted in 10 CFR  
18 Part 61 covering low-level radioactive waste.

19 Let's see. On low-level waste, we also  
20 regulate transportation of low-level waste under our  
21 Part 381 regulatory authority. And while our  
22 regulation -- you need to understand how we receive  
23 our regulations in both low-level waste and  
24 transportation of low-level waste. In 1962, New York  
25 State became the fourth agreement state in the nation.

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1                   And what meant is the Atomic Energy  
2 Commission set up the agreement states program in  
3 1960, and if a state came forward and demonstrated  
4 they had a regulatory program adequate and compatible  
5 with that, they then -- the Atomic Energy Commission  
6 -- for the peaceful uses of radioactivity, with the  
7 exception of the nuclear powerplant siting in  
8 particular and regulation of federal facilities, the  
9 state could receive agreement state status which meant  
10 that the AEC relinquished, and now the Nuclear  
11 Regulatory Commission relinquishes regulatory  
12 authority based on that adequate and compatible set of  
13 regulations and laws.

14                   Because now that the programs are not  
15 inspected by the NRC or anything like that, they are  
16 very aggressive in their inspection program of our  
17 program.

18                   But New York State received that from the  
19 Nuclear Regulatory Commission in -- or the Atomic  
20 Energy Commission in 1962. The agency split in 19 --  
21 the early '70s, I think it was '73 -- into DOE and the  
22 Nuclear Regulatory Commission, actually DOE's  
23 predecessor. It was called ERDA, I believe. Not  
24 NYSERDA but ERDA in those days, if I remember  
25 correctly.

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1 But anyway, DOE is self-regulating based  
2 on that fact that they inherited that part of the  
3 Atomic Energy Commission and the Nuclear Regulatory  
4 Commission, though it's not the general authority over  
5 NRC or DOE facilities.

6 As such, our regulations have a specific  
7 exemption for DOE and its contractors, so when I  
8 mention things like the low-level waste site being  
9 built in compliance with our regulations, if DOE were  
10 to build it it's a different standard than NYSERDA,  
11 number one; and, number two, our transportation  
12 regulations -- if a truck leaves the site and it has  
13 DOE wastes or DOE contractor waste on it, it does not  
14 have to comply with those. But if it has NYSERDA or  
15 wastes that would be disposed of by the state at  
16 another site, it would have to come under our  
17 regulation.

18 As I said, the ducks get more and more  
19 confused, coming back to the tie.

20 (Laughter.)

21 I'm just trying to explain what the real  
22 regulatory paradigm is out there for this.

23 Part 373 is our RCRA regulations, and this  
24 state -- this site is a site that has interim status  
25 permit under the Resource Conservation and Recovery

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1 Act. And as such, the operation, storage, closure,  
2 and post-closure of these facilities must be managed  
3 and maintained according to the regulations that the  
4 Department has promulgated under them.

5 That is a program which is -- the  
6 Department received authorization from the  
7 Environmental Protection Agency, and it also covers  
8 mixed -- the hazardous waste aspects of mixed waste.  
9 What else did I want to say on that?

10 The DEC and EPA entered into a 3008(h)  
11 corrective action consent order with both NYSERDA and  
12 DOE, which requires a state -- a site-wide RCRA  
13 facility investigation of ERDA and DOE solid waste  
14 management units to determine the extent of  
15 contamination, taking interim corrective measures  
16 under that, development of the corrective measurement  
17 study, and the decommissioning EIS will fulfill the  
18 requirements of the corrective measurement study. But  
19 the site will have to be closed under RCRA as well as  
20 under radiation regulatory regulations.

21 The Federal Facilities Compliance Act the  
22 Department is also involved in, and that governs DOE  
23 facilities that produce mixed waste, and it requires  
24 a site treatment plan which is annually updated.

25 The Clean Water Act -- the state became --

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1 received delegation in December of 1978, the first EPA  
2 region in the state to receive that, which is the  
3 State Pollutant Discharge Elimination System, SPDES  
4 for those that are familiar with it, and it was a  
5 delegated program from EPA as we mentioned. And it  
6 creates our enhanced structure for regulating  
7 discharges to water bodies in the state. And our  
8 regulations are in Parts 700 through 706 in that area.

9 The Clean Air Act I mentioned to you  
10 before. Under Title 5, the Department has accepted  
11 regulatory authority for -- from EPA for most  
12 regulated pollutants. The Department has also  
13 promulgated ambient air quality standards, Part 257.

14 And this is one of these things where we  
15 evolved -- we will be evolving to become a regulator  
16 of DOE facilities. But right now it's in the  
17 evolutionary process.

18 I mentioned stream protection regulations,  
19 and I mentioned the wetlands issue before.

20 There are other regulations in the  
21 Department I haven't mentioned, such as the closure of  
22 abandoned oil and gas wells by way of reclamation,  
23 whether there be any mining or sand or what have you  
24 on the site. Storage tank closures and solid waste  
25 disposal requirements of the Department.

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1                   And, finally, the Department is an  
2                   involved agency with the Energy Research and  
3                   Development Authority on the environmental impact  
4                   statement for this facility.

5                   And that's all I have.

6                   MR. CAMERON: Okay. Thank you, Paul.

7                   I think you can see from Paul's  
8                   presentation that DEC has a lot of responsibilities,  
9                   and we'll get to explore some of those a little bit  
10                  further. We want to complete the regulatory picture  
11                  by going to Gary Baker of the New York State  
12                  Department of Health, and Gary is the Chief of Field  
13                  Operations for Environmental Radiation Protection.  
14                  He's been there for about 10 years, and he is a  
15                  certified health physicist.

16                  And after Gary we'll come back and start  
17                  with questions for this particular panel. Gary?

18                  MR. BAKER: Thank you. Can you all hear  
19                  me? Okay. Good.

20                  Okay. We don't have our viewgraphs, but  
21                  I am -- I work out of the Bureau of Environmental  
22                  Radiation Protection, and I've been involved with West  
23                  Valley I think a little over a year now. In the past,  
24                  our new director, Adela Salame-Alfie, had been  
25                  involved as I think the primary person with West

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1 Valley, and also Mr. Steven Gavitt, that some of you  
2 may know. I know that some of you met Steve here at  
3 an interview. They've both been involved in this  
4 program or involved with West Valley for a number of  
5 years.

6 And it's not -- and I've been with the  
7 Department, actually, 23 years. So I have heard some  
8 things about West Valley, because we do talk and we're  
9 a small group.

10 But the Department of Health has been at  
11 the meetings with the EPA and the NRC, and we are  
12 involved in developing the -- we were involved in  
13 developing the communications plan, and we plan to  
14 continue our involvement with these agencies. And,  
15 frankly, we've been very impressed by the actions that  
16 have occurred and the professionalism of the staff and  
17 all of the agencies.

18 The Department's objective, of course, is  
19 the protection of public health -- our Department.  
20 And as a result, we develop laws and regulations that  
21 have been implemented and promulgated to protect the  
22 public health, and we do -- we have a number of  
23 programs that range from inspecting restaurants to  
24 hospitals to nursing homes.

25 We have programs that address community

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1 health, and we work with the counties to address  
2 public health. But in terms of West Valley, we have  
3 two roles, and one role is an advisory role, and the  
4 other role is a regulatory role.

5 And in the regulatory role we have the  
6 Safe Drinking Water Act that we administer as a  
7 Department. My bureau generally doesn't get involved  
8 too much in the Safe Drinking Water Act, unless it  
9 involves the matters of radioactive materials in which  
10 we would advise our Bureau of Public Water Supply on  
11 how to address these issues.

12 But the Safe Drinking Water Act programs  
13 come under the EPA also, and so in that sense we are  
14 under the Environmental Protection Agency for those  
15 standards, and those standards are the same as the  
16 Environmental Radiation -- or the Environmental  
17 Protection Agency's standards.

18 And our other regulatory role -- I guess  
19 we would -- if everybody else decided to leave, we  
20 would probably be very concerned and take some sort of  
21 actions. But we don't anticipate that that would be  
22 something that would occur.

23 But in our advisory role with DEC -- and  
24 this occurs with other waste sites, not just  
25 radioactive waste sites, but some of the sites that

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1 involve some radioactive materials out in Buffalo that  
2 we've been involved in, and also in other non-  
3 radioactive waste sites.

4 We concur with and have a rapport with the  
5 Department of Environmental Conservation, so we  
6 maintain an advisory role where we discuss matters and  
7 generally agree with the Department of Environmental  
8 Conservation on regulatory issues. So from that  
9 standpoint, we address -- we are addressing issues  
10 here at West Valley.

11 We do not anticipate that there would be  
12 an actual regulatory role in the Safe Drinking Water  
13 Act, because there is not a regulated public water  
14 supply that's using materials from the site -- or  
15 water from the site. And in any case, we would  
16 regulate the operator of that site -- of the water  
17 supply rather than the West Valley sites.

18 I would say that we do agree with the  
19 communications plan, and in the plan there is a Matrix  
20 Table 1 that there are some -- I just wanted to go  
21 over some of the items that we agree with. We agree  
22 with the ALARA principle. This is a principle that we  
23 have in our own regulations where we regulate -- we do  
24 do licensing of radioactive materials facilities for  
25 medical research and academic purposes.

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1 But in -- so we do have some regulatory  
2 roles in the use of radioactive materials, but not  
3 here in this case. But we do agree that the ALARA  
4 principle, which means that whatever cleanup there is  
5 it should be cleaned up to the extent that it's  
6 technologically feasible. And we agree with the  
7 license termination rule, the 25 millirem, the  
8 possibility of partial release, that the environmental  
9 impact statement should give appropriate guidance.

10 We agree with the use of MARSSIM, which is  
11 a statistical methodology to address the actual  
12 implementation of the cleanup. And, foremost, we  
13 agree that the stakeholders issue should be addressed,  
14 and we welcome any further and continued comments from  
15 stakeholders. And we would like -- and we do value  
16 them, and we do want to address them.

17 We have also been involved in West Valley  
18 from a monitoring -- we have been monitoring the split  
19 samples here for a number of years, and so we have  
20 been involved in the environmental monitoring of West  
21 Valley. And that has not been a regulatory role.

22 And with that, I think I've kind of  
23 outlined where we stand. Primarily, we will be  
24 working with Department of Environmental Conservation  
25 in terms of regulations, and we will be addressing any

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1 regulatory concerns through the Department of  
2 Environmental Conservation.

3 We appreciate all of the work that has  
4 been done and the accommodations that have been made  
5 for us, and we appreciate the Nuclear Regulatory  
6 Commission and their very professional approach to  
7 this issue, and the Environmental Protection Agency,  
8 who has accommodated us in a number of our meetings  
9 and they continue to do so. And, of course,  
10 Department of Environmental Conservation, who remains  
11 our close ally. And also, the accommodations that  
12 were given to us by NYSERDA and DOE.

13 Thank you very much.

14 If you have any questions, Chip will  
15 handle it.

16 (Laughter.)

17 MR. CAMERON: I'd like to thank all the  
18 panelists. And hold your hats, because we're going to  
19 try -- so that we can get questions and comments from  
20 you on the record easily, we're going to try to turn  
21 this back on. That's what made that horrific sound.  
22 Okay? It's EPA -- too literal, I guess.

23 (Laughter.)

24 But at any rate, we want to go out to you  
25 for comment, question. And what I'd like to do is

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1 start with comments, questions for EPA and the state  
2 regulators, and then we can segue into questions for  
3 the NRC. I don't think we were quite done with them  
4 when the lights went out.

5 And also, we do have Alice Williams, Paul  
6 Piciulo here, so we can talk to them also. But let's  
7 at least go to the EPA and Department of Environmental  
8 Conservation and Department of Health. Do we have any  
9 questions?

10 And, John, can I try? Okay. Maybe if I  
11 tiptoe out here.

12 Does anybody have a question for the state  
13 regulators or the EPA or any comments? Anybody at  
14 all? It was a lot of material that we gave you. And  
15 relationships between agencies is also on the table  
16 for discussion or comment.

17 Yes, Ray.

18 MR. VAUGHN: I want to thank all three of  
19 you for the presentations tonight, but I have a  
20 particular question for Paul Merges.

21 One of the sections of the West Valley  
22 Demonstration Project Act calls for low-level and  
23 transuranic waste disposal to be done in accordance  
24 with applicable licensing requirements. And since  
25 this is the West Valley Demonstration Project Act,

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1 this is the responsibility of the Department of Energy  
2 to engage in such disposal in accordance with  
3 applicable licensing requirements.

4 If DOE did disposal at West Valley --  
5 onsite at West Valley, what do you see as applicable  
6 licensing requirements as contemplated by the Act?

7 MR. MERGES: This is a hypothetical, and  
8 are we talking disposal by any near surface disposal  
9 or --

10 MR. VAUGHN: It's in relation to low-level  
11 or transuranic. So I think, yes, it would -- we're  
12 talking about --

13 MR. MERGES: We're not talking above  
14 ground monitored storage or this concept that DOE has  
15 worked on for --

16 MR. VAUGHN: Well, I mean, let me rephrase  
17 that, because I am kind of popping a question here  
18 that people perhaps haven't thought about. But this  
19 clearly is one of the sections of the West Valley  
20 Demonstration Project Act. It's one of the action  
21 items for DOE. Now, they may not dispose of materials  
22 -- dispose material onsite, so it may be hypothetical.

23 But since the regulators are getting  
24 together in a very cooperative way, I think this is a  
25 question that will need to be sorted out, at least

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1       prematurely, what would be the applicable licensing  
2       requirements if DOE were to engage in onsite disposal?

3               MR. MERGES: Well, I think that DOE has  
4       lots of executive orders, and they would have to  
5       comply with their appropriate order for disposal of  
6       transuranic waste orders. Period.

7               But as far as New York State's regulations  
8       applying to them, we specifically exempt them, but we  
9       would hope that they would use our regulations as  
10      an --

11              MR. VAUGHN: I would ask that maybe that  
12      be put as kind of a parking lot issue, in the sense  
13      that what you seem to be saying is that there would  
14      not be licensing, yet this federal law, the West  
15      Valley Demonstration Project Act, specifically calls  
16      for -- I think it calls for applicable licensing  
17      requirements. In fact, you're saying none are  
18      applicable?

19              MR. MERGES: You're talking about DOE, not  
20      NYSERDA, doing this, though?

21              MR. VAUGHN: Exactly, because this is the  
22      West Valley Demonstration Project Act.

23              MR. MERGES: Right. Well, I'm unaware of  
24      any license that would be required in this area of  
25      DOE.

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1           MR. VAUGHN:   Yet the law specifically  
2           refers to "applicable licensing requirements." So we  
3           don't need an answer at the moment, but I think it  
4           would be useful for NRC and DEC to look at what the  
5           interpretation of that language is.

6           MR. MERGES:   Okay.

7           MR. CAMERON:   We have it in the parking  
8           lot.   Anybody from NRC or any other agency want to  
9           take a crack at the question, or should we just leave  
10          it in the parking lot and go on?   Leave it be.   All  
11          right.

12          Other questions?   Department of Health?  
13          Department of Environmental Conservation?   The United  
14          States Environmental Protection Agency?   Yes, sir.

15          MR. KING:   I would address this to Paul.  
16          Paul, you talked about the --

17          MR. CAMERON:   Yes.   Can you just say your  
18          name?   I'm sorry, sir.

19          MR. KING:   Bill King.

20          MR. CAMERON:   All right.   Thank you.

21          MR. KING:   Paul Merges -- I know there are  
22          three Pauls here.   Like I said before, we ought to be  
23          able to get things straightened out with all the  
24          Pauls.

25          But the -- you mentioned that you

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1 monitored the transportation of trucks going in and  
2 out. Who monitors the rails?

3 MR. MERGES: We regulate the transport on  
4 roads of trucks. We don't -- the low-level -- our  
5 regulations were adopted in the late '80s for -- under  
6 Part 381. We prepared an environmental impact  
7 statement and a risk assessment in support of those  
8 regulations, but we really didn't feel we had the  
9 regulatory authority to regulate interstate shipments  
10 on rail, which is what could have happened. And we  
11 did not choose to -- either rail or road it was a very  
12 general statement what the law was that was added to  
13 the ECL to include our regulatory program there.

14 So that would have to come under -- well,  
15 who would regulate them is NRC and DOT or regulations  
16 would be the applicable regulations for --

17 And, again, I go back to DOE executive  
18 orders. They have an extensive regulatory program on  
19 their own. And people -- pardon?

20 MR. VAUGHN: I haven't seen it in writing  
21 anywhere. I would choose to have someone to back and  
22 put it in --

23 MR. CAMERON: Okay. So the issue is the  
24 regulation of --

25 MS. WILLIAMS: Can I ask a clarifying on

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1       that?

2                   MR. CAMERON:    Sure.   Go ahead, Alice.

3                   MS. WILLIAMS:   Bill, is it regulation of  
4       radioactive material or regulation of radioactive  
5       waste via rail?  Is that the question?

6                   MR. KING:    Yes.   Yes.   Yes, Alice.

7                   MR. CAMERON:    So  who  regulates  the  
8       transportation of radioactive material --

9                   MS. WILLIAMS:   And what we'll do is --  
10      what I'd like to propose --

11                  MR. CAMERON:   -- by rail?

12                  MS. WILLIAMS:   Yes.   We can get that  
13      definitive answer to Bill at a later date.

14                  MR. KING:    All right.

15                  MS. WILLIAMS:   The Department --

16                  MR. CAMERON:   Okay.   So, Alice, your  
17      committee can answer that.

18                  MR. KING:   Under the national contingency  
19      plan, DOE must manifest all of this material, properly  
20      manifest it.   Also, that's another key to that  
21      manifesting, so that it doesn't end up going in the  
22      wrong waste disposal site.

23                  MS. WILLIAMS:   I'll take the action to get  
24      a response in writing back on that.

25                  MR. CAMERON:   And I think that the NRC

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1 folks are saying that the Department of Transportation  
2 has, really, the primary role in doing this. And you  
3 may be able to provide more detail on that. But I  
4 think the simple answer is Department of  
5 Transportation.

6 Other questions for our federal and state  
7 regulators? Larry and Chad and Jim, do you want to  
8 come back up here? We'll see if there's questions for  
9 you. Open it up for any comments or questions, and we  
10 will get to the three people who wanted to make formal  
11 statements tonight.

12 But any questions for the people who are  
13 here?

14 Why don't we go to the one parking lot  
15 issue on budgetary. And I'll ask Alice and Paul  
16 perhaps, what are the implications for cleanup from  
17 any potential budgetary reductions? Can you say  
18 anything about that?

19 MS. WILLIAMS: Yes. The driving force on  
20 the budget is the DOE appropriated budget, because  
21 what we are appropriated through Congress determines  
22 what 10 percent is that New York would pay.

23 The short answer is is that the small the  
24 budget, the slower the cleanup. And the priority is  
25 the safety and health of the workers onsite, and the

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1 safety and health of the environment and the people  
2 offsite. And so that would be addressed first before  
3 any kind of cleanup activities would continue.

4 MR. CAMERON: Okay. Thank you very much.

5 Other questions?

6 Okay. Why don't we proceed to the people  
7 that wanted to make a statement for us tonight.  
8 Carol, do you want to come up here?

9 MS. MONGERSON: Sure.

10 MR. CAMERON: Okay. Great. This is Carol  
11 Mongerson.

12 MS. MONGERSON: At last I just calculated  
13 it, I've been here for -- between last night, this  
14 morning, and tonight, I've been waiting to talk for 10  
15 hours.

16 (Laughter.)

17 I also should point out -- who was it --  
18 was it you, Paul, who said that the race is won by the  
19 one who -- not necessarily by the fastest, but by the  
20 one who keeps running. Well, I qualify.

21 (Laughter.)

22 I may not be fastest, but I've been here  
23 since 1974.

24 Civilized companies are governed by laws,  
25 and an example of that would be we have a law that

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1 says we drive on the right-hand side of the road.  
2 Pure and simple. If an Englishman comes and wants to  
3 drive on the left-hand side of the road, we don't  
4 allow it. We -- it would be just too dangerous.

5 There are no exceptions to that law. We  
6 drive on the right-hand side of the road. Period.

7 We have a law that says you pay income  
8 tax, and there are no exceptions to that either just  
9 because it's hard for you or because you don't have  
10 the money or it costs too much. And there are no  
11 exceptions to that, no exceptions, no innovative  
12 approaches, no unique solution, no flexibility at all.  
13 You pay.

14 So I submit that the LTR is that kind of  
15 a rule. The NRC is determined that that safe level --  
16 the highest safe level, because if it were lower ALARA  
17 would go into effect.

18 And I also -- I actually went and looked  
19 up the meaning of the word "safe" today. Safe is not  
20 -- at least when you're talking about nuclear waste,  
21 it's not something we can have more or less of. It's  
22 either safe or it's not safe. So when you apply the  
23 LTR, we have to assume that it's the highest level  
24 that's safe.

25 So I have three questions. How do we --

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1       how come DOE is allowed to break that rule? What is  
2       the point of applying a rule if you're allowed to  
3       break it? That's a rhetorical question, because I  
4       already know the answer.

5                       (Laughter.)

6               The answer is that -- because it's too  
7       hard, and it costs too much. It has to be  
8       technologically feasible and economically justifiable,  
9       whatever that expression is you use. Basically, in  
10      English, that means it's too hard and it costs too  
11      much.

12              So what are we here at West Valley? Are  
13      we second-class citizens just because we have a site  
14      that's especially dirty and especially challenging and  
15      difficult to clean up? Does that mean we don't get to  
16      get the same kind of protection that the rest of the  
17      country gets?

18              My second question is: how come NRC  
19      doesn't have to follow the same environmental  
20      protection laws that the rest of -- the procedures  
21      that the rest of the country does? For instance,  
22      NEPA. How come you don't have to follow those  
23      regulations?

24              That's also a question that doesn't  
25      require an answer, because you've already provided

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1 one. You say it's because you've already done a NEPA  
2 procedure on the LTR, but that was a different LTR.  
3 I know you claim it wasn't, but it is. The LTR that  
4 you've applied to West Valley is different from the  
5 one that was generic and had the NEPA procedure.

6 My third question is: how could you even  
7 consider reclassifying high-level waste into  
8 incidental waste? For one thing, it's against the  
9 law. It's against the West Valley Demonstration  
10 Project Act. For another thing, every school child  
11 knows that you can't change the physical nature of a  
12 substance by renaming it. It simply doesn't make any  
13 sense. It's ludicrous to even consider that.

14 I would like to really close by saying I'd  
15 like to have the opportunity to share with you my  
16 visions of this -- for this site, because I think it's  
17 applicable here. DOE has told us their vision for the  
18 site, which is basically the cement in place scenario.

19 And -- but my vision is this: I would  
20 like to see DOE commit itself to really cleaning it  
21 up, getting it up out of the ground, exhuming the  
22 burial ground, and taking up the tanks, doing what  
23 they have to do with the residual waste in the melter,  
24 doing what they have to do with the building to get it  
25 all up in retrievable/monitorable storage above

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1 ground.

2 And I don't want to hear from you that  
3 it's technologically infeasible, because I saw DOE do  
4 this vitrification project. They didn't things nobody  
5 thought were going to be possible, or at least a lot  
6 of us didn't think they were going to be possible, and  
7 they've done it magnificently. So I know that you can  
8 exhume that burial ground.

9 And the great benefit of that for DOE  
10 would be that NYSEERDA would get off their backs then.

11 (Laughter.)

12 So, and incidentally, just to go back a  
13 little bit, for the NRC, if you would just go back to  
14 the same LTR that you applied to the rest of the  
15 country, the generic one, you wouldn't have to do a  
16 NEPA, because you could use the NEPA but you're not,  
17 at least not so far.

18 So that's all I have to say. Thank you.

19 MR. CAMERON: Thank you very much, Carol.

20 Is Lou Brehm still with us? Lou, would  
21 you come up and give us your comments, please?

22 MR. BREHM: I have a pair of very strong  
23 reading glasses. They're only used for low light  
24 conditions, and, of course, I know what a well lighted  
25 facility this is, so I left them home. So --

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1 (Laughter.)

2 -- please bear with me if I have trouble  
3 with some of the words here.

4 I'm a Senior Environmentalist with Erie  
5 County Environmental Planning, and I'm filling in for  
6 Mark Wichkowski tonight from the Energy Office. I'm  
7 sure you all know who he is. And I have a prepared  
8 statement.

9 On behalf of county executives in the  
10 County of Erie, we wish to make the following four  
11 item position statement. Item number one, we support  
12 the Citizen Task Force position regarding the policy  
13 statement and believe that: a) the lack of definitive  
14 prescriptive criteria will only complicate matters in  
15 any future EIS process, and b) we believe that  
16 reclassification of residual high-level waste is  
17 incidental. And the opportunity for decontamination  
18 exemptions based on technical and feasibility or cost  
19 is not acceptable.

20 Item number two, the NCR is failing to  
21 uphold necessary NEPA requirements for establishing  
22 decommissioning criteria for West Valley.

23 Item number three, the policy statement is  
24 inherently vague, and, therefore, will be subject to  
25 much future speculation and rancor as decontamination

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1 criteria are debated after the EIS process. This is  
2 not a proactive approach.

3 Item number four, the NCR should  
4 incorporate the CTS recommendations and amend the  
5 policy statement to reflect unambiguous standards for  
6 decommission and -- for decontamination, rather, and  
7 decommissioning of the West Valley site.

8 This concludes the Erie County position.  
9 I will gladly repeat any items if you had trouble  
10 understanding them.

11 MR. CAMERON: Okay. Thank you, Lou, and  
12 thank Erie County for bringing those remarks to us.

13 Gary Abraham?

14 MR. ABRAHAM: I'm speaking on behalf of  
15 Concerned Citizens of Cattaraugus County. We are a  
16 nonprofit organization that's been around since 1991.  
17 We represent about 600 individuals and families in the  
18 county.

19 We submitted comments on the draft policy  
20 statement in 2000, and I want to express my  
21 frustration with not having any response to those  
22 comments. At the time, I was in an academic position,  
23 I had a very nice situation where I could spend 60  
24 hours, which is what it took me, to figure out the  
25 rules to comment intelligibly on the draft policy

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1 statement. I don't have that same luxury anymore.

2 And I know that all of these folks up here  
3 spent a lot more time than I did, although the people  
4 from the public in this county and in the neighborhood  
5 didn't get paid a penny to make their comments, and I  
6 didn't get paid a penny to make my comments. I took  
7 that time out of my job to do that.

8 And I've done comments on a number of DEC  
9 projects, and I almost always get a responsiveness  
10 summary or sometimes, if I'm lucky, I get responses  
11 exactly to my comments. In this case, I heard for the  
12 first time tonight, and I'm gratified to hear, because  
13 it was part of my comments submitted for Concerned  
14 Citizens, that we were concerned that the EPA standard  
15 was much more protected than the NRC standard and the  
16 DOE proposed standards, that all of these standards  
17 are coming together, and the EPA now is saying -- and  
18 like I said, I heard this for the first time tonight,  
19 that they're satisfied that the NRC LTR standards are  
20 as protective as their own.

21 But looking forward to the EIS process, I  
22 can't help but wonder that the lack of responsiveness  
23 to local people's comments by the agencies -- and I  
24 know this is a very complicated technical process, but  
25 I think that there are enough resources here to at

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1 least do that, to respond to our comments on a timely  
2 basis. It doesn't bode well for the progress of the  
3 EIS process which will be long and will probably  
4 involve a number of battles over very specific issues.

5 Another comment I made at the time, which  
6 I don't see resolved here, is that the process of  
7 determining what level of cleanup and how that cleanup  
8 will go is being broken up into parts under NEPA and  
9 SEQRA, the two federal and state statutes that govern  
10 the environmental impact review process. It's illegal  
11 to break up a project into separate parts that  
12 essentially will have to be decided ultimately as a  
13 whole.

14 That's called impermissible segmentation.  
15 I still see that happening, and the cooperation of the  
16 agency certainly will allay some of my fears there,  
17 but, in fact, the plans seem to be to put these pieces  
18 together over time over a long drawn-out period, and  
19 decide how to clean up separate parts and separate  
20 issues one at a time. I don't think that's  
21 permissible under the environmental impact statement  
22 rules.

23 I think more importantly perhaps for the  
24 local public, though, is the question of how the  
25 impacts are going to be determined and what is going

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1 to be considered technologically feasible.  
2 Technologically feasible involves a cost-benefit  
3 analysis. You determine what the impacts are and how  
4 much you can spend to mitigate those impacts.

5 Is it going to be the resident farmer who  
6 will be the standard for what the impacts are? What  
7 about the impacts of hazardous waste as well as  
8 radiological waste that are seeping through the  
9 groundwater? This is an unusually erosive site.  
10 We've asked that to be taken into account. The  
11 Coalition for West Valley has talked about that from  
12 the beginning.

13 There are hazardous wastes and  
14 radiological wastes seeping into Cattaraugus Creek.  
15 There are people who fish along Cattaraugus Creek, all  
16 the way down to the Indian reservation at Lake Erie.  
17 There are deposition of hazardous waste materials as  
18 well as radiological waste materials in the sediments.  
19 There is biomagnification of those materials as they  
20 move through the food chain as microorganisms eat them  
21 and they eventually make their way up to fish, and  
22 then on to the kitchen table of the people who eat  
23 those fish.

24 Well, the environmental impact statement  
25 looked at the impacts of that on the people who are

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1 the fish eaters downstream from the site. Those fish,  
2 those sediments, those materials go into Lake Erie.  
3 People from all over the place eat that -- eat those  
4 fish.

5 Now, if you expand the scope of impacts  
6 great enough, then the cost of cleaning up those and  
7 mitigating those impacts has to go up. So there is a  
8 game that will be played over what is the scope of the  
9 impacts, and can we narrow the scope of the impacts to  
10 bring it into -- under a budget?

11 Or do we take a realistic look at what the  
12 impacts will be over 1,000 years? And we know that  
13 many of these materials are going to be hazardous for  
14 much more than 1,000 years, the radiological materials  
15 in particular, and increase the resources that we  
16 bring to bear on the cleanup.

17 So we can use numbers and exposures, but  
18 are we going to calculate all of the people who are  
19 impacted and add up all of the numbers? Or are we  
20 going to restrict the scope of impacts and bring the  
21 cleanup down to a realistic, feasible level from a  
22 budgetary point of view?

23 That's another game that will be played in  
24 the environmental impact statement process. And as we  
25 comment and participate in that process, I would like

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1 to think that the agencies will be more responsive in  
2 a more timely manner to the people who live in this  
3 place, and provide local knowledge that the agencies  
4 don't have and can't have.

5 The whole idea of public participation in  
6 the environmental impact review process is to bring  
7 local knowledge to bear on the project. And if local  
8 knowledge is going to be simply crunched into a  
9 quantitative calculation of risk assessment, it's not  
10 going to be meaningfully considered.

11 And, finally, I would want to say that the  
12 benefits that this site provided were benefits for the  
13 entire nation. The burdens are not on the entire  
14 nation. The resources of the entire nation have to be  
15 put back into cleaning this up and mitigating the  
16 impacts on the people who are bearing most of the  
17 burden. It's not fair to do anything else.

18 Thanks.

19 MR. CAMERON: Thank you, Gary, for those  
20 comments.

21 I'm going to just emphasize the one for  
22 future reference, which is the effective response to  
23 public comments in any environmental impact statements  
24 that are prepared by the agencies.

25 And next we're going to go to Jim

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1 Pickeral. Is Jim here?

2 MR. PICKERAL: I'm still here.

3 MR. CAMERON: Great.

4 (Laughter.)

5 Thank you for staying with us.

6 MR. PICKERAL: I didn't fall asleep at any  
7 point in time here.

8 (Laughter.)

9 The presentations were good.

10 MR. CAMERON: There won't be a quiz.

11 (Laughter.)

12 MR. PICKERAL: I've been with the  
13 Coalition for almost as long as I can remember, but  
14 there are a couple of remarks from previous speakers  
15 that I want to bring forth before I get into my own  
16 diatribe.

17 Several years ago, I attended a hearing by  
18 DEC on the classification of Cattaraugus Creek, and  
19 I've got to tell you about this administrative  
20 miracle, because it just rubbed me the wrong way.  
21 Cattaraugus Creek is classified as a Class C stream,  
22 and it goes down to Gowanda, and then there is this  
23 state facility. And then it is upgraded to a Class B,  
24 so you can drink the water. And then, after it gets  
25 by that facility, it's now downgraded again to

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1 Class C.

2 I don't want to see and/or hear of any  
3 more administrative miracles like that.

4 (Laughter.)

5 Now, the second thing was something that  
6 Paul Merges brought up, and it had to do with World  
7 War -- principally with World War II. And what he  
8 said was that when the nation goes to war, it all  
9 draws together. In other words, the one thing that he  
10 forgot to tell you was that the sky's the limit as far  
11 as dollar bills is concerned.

12 And now we get to what I want to say.  
13 What's wrong with this picture? Here we have had six  
14 government agencies coming in here and telling us,  
15 "This is what I'm going to do. This is what I'm going  
16 to do. This is what I'm going to do. This is what  
17 I'm going to do. And this is what I'm going to do."  
18 One more. That's what I'm going to do, too.

19 (Laughter.)

20 Now, all of these agencies come from one  
21 source. We, the people, the first three words in the  
22 Constitution of the United States, we, the people,  
23 created the Federal Government. The Federal  
24 Government created all of the federal agencies that  
25 we're talking about here tonight, and through that

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1 Constitution it gives recognition to the state  
2 agencies.

3 Now, all of these agencies are, one,  
4 servants of we, the people, not our bosses. You do  
5 not come down here and tell us what you're going to  
6 do. We, the people, tell you what you're going to do.

7 Number one, this nation is at war with a  
8 pollution of: a) the air, b) the water we drink, and  
9 c) the land that we derive our food from. So what is  
10 the answer? The answer is: the sky is the limit as  
11 far as the dollar bill is concerned.

12 Every one of you agencies needs to go back  
13 to your bosses and tell them, "Look, we are still the  
14 servants of the people, and we're accountable to  
15 them."

16 That's all I'm going to say. Good-bye.

17 (Laughter.)

18 MR. CAMERON: Okay. Thank you, Jim.

19 Next, let's go to Ray Vaughn, and then  
20 we'll finish with Warren Schmidt.

21 MR. VAUGHN: I want to say just a few  
22 words about the final policy statement, particularly  
23 about the three different versions of the final policy  
24 statement. One is the written version, and I think  
25 what Erie County said is something about -- it's

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1 inherently vague. I hadn't thought of that phrase,  
2 but that seems quite applicable.

3 The written version of the final policy  
4 statement is problematic. There is another version  
5 that I heard quite a bit about in the last 24 to 30  
6 hours -- in last night's meeting, in today's meeting,  
7 both of today's meetings actually -- that sounds a lot  
8 better. And there's another version that I will call  
9 my own strictest reading of the written or published  
10 version of the final policy statement.

11 So let me talk about these three in a  
12 little bit more detail, and I will also submit for the  
13 record a copy of the letter that West Valley Coalition  
14 just sent to Chairman Meserve of NRC. This letter  
15 deals with a number of serious issues. I'll spare you  
16 the reading of the 10 pages tonight, but it will be  
17 part of the record.

18 This letter is directed partly to the  
19 written, published version of the final policy  
20 statement. Some of the things in it may not apply to  
21 the better version, the orally-described version and  
22 my own strictest reading of the published version.  
23 But there are things in here that go into other issues  
24 that I won't talk about tonight but still need some  
25 very serious consideration by NRC. So I pass that on.

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1           As I say in the letter, as the Coalition  
2           says in the letter, we have a lot of concerns about  
3           the excessive flexibility and lack of definiteness of  
4           the final policy statement. Other speakers have  
5           certainly talked about that tonight.

6           I took the liberty of removing the  
7           loopholes from the published version. And for those  
8           of you who can see it, I simply smithed out the words  
9           flexible, flexibility, innovative solutions,  
10          exemptions, from the various stages of the published  
11          version. You can see that there are quite a few of  
12          these loopholes that I've excised in this manner, and  
13          I will pass these on for possible inclusion in the  
14          record. I will also pass on the 21 excised words.

15                   (Laughter.)

16          It's, in large part, the emphasis that was  
17          given to flexibility, the availability of exemptions  
18          that concern me, the fact that it was pointed out so  
19          frequently in the published version. What we've heard  
20          orally from NRC is quite different. What they have  
21          said, I think, is more clear-cut, more encouraging,  
22          and that is that the license termination rule has been  
23          adopted as the policy for West Valley.

24          They have said orally that getting an  
25          exemption would be a very high hurdle, that it's not

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1 going to be granted easily. They kind of ducked the  
2 question of how they would handle it from a NEPA  
3 standpoint, but nevertheless I was quite encouraged by  
4 hearing NRC talk in person about what they issued on  
5 February 1st.

6 It's still problematic which governs,  
7 whether it's the written version which I think is  
8 inherently and hopelessly vague, or the much more  
9 encouraging version we've heard in person.

10 The third version is what I call my own  
11 strictest interpretation of the published version, and  
12 that also is not too bad. In other words, I think I  
13 can live with that, because as I interpret it a lot of  
14 it can be thrown out or revised.

15 As Carol mentioned and as we have  
16 certainly said in the letter I just gave to NRC and  
17 the stenographer, the incidental waste advice or  
18 whatever that consists of in the final policy  
19 statement involves something that is illegal. In  
20 other words, as we read the West Valley Demonstration  
21 Project Act, there simply is no legal way to  
22 reclassify high-level waste as incidental.

23 So my own strictest reading of the  
24 published version says we can throw that out. We  
25 don't have to worry about it. It might have to be

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1 litigated some day, but for the time being we can  
2 figure that that's not really a part that will go  
3 forward.

4 The question of exemptions, as I read the  
5 operative part of the final policy statement in the  
6 Federal Register -- and I understand they have to be  
7 roughly the last couple of pages -- I think that  
8 exemptions are not clearly granted in that operative  
9 part. And I think there are also problems when you  
10 consult 10 CFR Part 20 or 10 CFR Part 50 for the  
11 applicable exemption language, whether it would be  
12 applicable to a non-licensee such as DOE.

13 In terms of some of the other concerns I  
14 have with the rather ambiguous published version, if  
15 I apply my own strictest interpretation to the  
16 definition of critical group, for example, I think  
17 that the NRC is inclined -- as discussed in the final  
18 policy statement -- to make certain assumptions about  
19 what the critical group may be.

20 And as Gary Abraham was referring to, how  
21 you define the affected people is quite important. It  
22 may be the resident farmer is the critical group -- in  
23 other words, the most likely to be exposed under the  
24 circumstances. Or it may be that another group would  
25 be. You really need to look at a wide range of groups

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1 before you make that decision.

2 I think despite what the final policy  
3 statement says, when you look at the license  
4 termination rule and look at the governing language  
5 there, it is quite clear that care is needed in  
6 determining what the critical group is.

7 Combined dose is another issue. As I read  
8 the inherently vague language of the final policy  
9 statement, NRC proposes to combine all of the doses  
10 from the NRC-regulated part of the site into one  
11 calculated dose that must meet the license termination  
12 rule. They then say that the SDA would not be  
13 included in that calculation. That's at least how I  
14 read the language of the published final policy  
15 statement.

16 Yet, if I look at the license termination  
17 rule, it's quite clear that previous burial must be  
18 included in the calculation of what the allowable dose  
19 is for the NRC licensed portion of the site, or, in  
20 this case, the criteria that NRC is setting up for DOE  
21 at West Valley.

22 So my own strictest reading of the  
23 published version is much more encouraging than a  
24 casual reading of the whole thing might be. And let  
25 there be light.

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1 (Laughter.)

2 Thank you very much.

3 (Laughter.)

4 MR. CAMERON: Thank you, Ray.

5 Let's go to Warren Schmidt. Warren?

6 MR. SCHMIDT: Thanks, Ray.

7 My comments tonight are on behalf of the  
8 Citizen Task Force of West Valley. My remarks are  
9 from a letter that was sent to Chairman Meserve this  
10 morning on behalf of the Citizens Task Force. It is  
11 only two pages, so I will read it to you.

12 In verbal testimony given at the public  
13 briefing on January 12, 1999, and in written comments  
14 dated December 22, 1998, and January 5, 2000, the West  
15 Valley Citizen Task Force (CTF) expressed general  
16 agreement with the U.S. Nuclear Regulatory  
17 Commission's (NRC) application of the license  
18 termination rule (LTR) as the decommissioning criteria  
19 for the West Valley Demonstration Project.

20 However, the CTF specifically detailed  
21 numerous objections we had with earlier wording and  
22 provisions in the draft policy statements which would  
23 have: 1) delayed NRC's prescription of definitive  
24 decommissioning criteria until after the current West  
25 Valley environmental impact statement (EIS) process

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1 was completed.

2 Number two, allowed residual high-level  
3 waste (HLW) at the site to be classified as incidental  
4 waste. And, number three, allowed the United States  
5 Department of Energy (DOE) to depart from the LTR  
6 standards if they simply developed a rationale  
7 indicating that a particular cleanup alternative was  
8 considered technically infeasible or prohibitively  
9 costly.

10 We clearly urged the NRC to reject any  
11 such approach, and we were guardedly optimistic that  
12 the final policy statement would incorporate our  
13 recommendations and fulfill the NRC's obligation to  
14 prescribe a definitive set of criteria for  
15 decommissioning at the West Valley site per the WVDP  
16 Act.

17 Consequently, we are extremely  
18 disappointed that the final policy statement as  
19 published in the Federal Register on February 1, 2002,  
20 contains provisions which: 1) create a two-step  
21 process whereby NRC will allow DOE to select a  
22 preferred alternative following completion of the EIS,  
23 and then, and I quote "...verify that the approach  
24 proposed by DOE is appropriate."

25 Number two, establish new criteria for

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1 making incidental waste determinations which  
2 effectively allow DOE to reclassify much residual HLW  
3 and ultimately dispose of it on the site. And, number  
4 three, will allow exemptions from the LTR criteria,  
5 such as higher human exposure dose limits, should the  
6 DOE choose to select a particular cleanup alternative  
7 due to cost considerations. It should be noted that  
8 this would be the first time that federal high-level  
9 waste would be left on non-federal land.

10 In short, the CTF now believes that the  
11 Commission has failed to fulfill its mandate from  
12 Congress of prescribing decommissioning criteria for  
13 the West Valley demonstration project. A criterion is  
14 defined as a standard, a rule, test, or -- by which  
15 something can be judged.

16 The policy statement, as issued, provides  
17 for outright exemptions from the LTR and a  
18 reevaluation following completion of the EIS. It is  
19 even stated therein that, and I quote, "...for those  
20 portions of the site that are unable to demonstrate  
21 compliance with the LTR's restricted release  
22 requirement, the dose limits should be viewed as  
23 goals." Goals are not criteria.

24 The policy only purports to establish  
25 criteria. The unusual number of qualifying provisions

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1 serve to diminish the NRC's relevance in the EIS  
2 process and reduce the proposed LTR criteria to mere  
3 goals which may, or need not, be adhered to by DOE.  
4 In our public briefing comments dated December 22,  
5 1998, we stated our resolute opposition to the NRC  
6 extending DOE this form of de facto authority in  
7 establishing the cleanup standards for the project.

8 Last page.

9 We question whether the West Valley  
10 Demonstration Project Act authorizes the NRC to  
11 establish incidental waste determination criteria for  
12 the project. We are increasingly concerned about  
13 revised DOE plans to accelerate decommissioning  
14 activities when the respective long-term  
15 responsibilities of the federal and state governments  
16 in the cleanup and monitoring of the West Valley site  
17 have not yet been established.

18 The CTF, therefore, necessarily opposes  
19 any actions which serve to facilitate premature  
20 withdrawal of DOE from the project before all West  
21 Valley Demonstration Project Act and National  
22 Environmental Policy Act (NEPA) obligations are  
23 fulfilled. Consequently, we request clarification of  
24 the Commission's authority for providing incidental  
25 waste determination criteria for West Valley -- the

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1 documentation of any procedural or public  
2 participatory requirement which normally might apply  
3 to such an action.

4 In addition, we request formal definitions  
5 of engineered barriers and institutional controls as  
6 they relate to the LTR and EIS analyses. As the NRC  
7 has previously acknowledged, the West Valley site  
8 presents unusual challenges should long-term  
9 institutional controls need to be relied upon as part  
10 of the preferred alternative for the site.

11 The Commission indicates in the policy  
12 statement that it need not conduct an independent  
13 environmental review even though the generic EIS  
14 supporting the LTR requires that NRC, and I quote,  
15 "...conduct an independent environmental review for  
16 each site-specific decommissioning decision where land  
17 use restrictions or institutional controls are relied  
18 upon by the licensee."

19 Whether the NRC conducts an independent  
20 review or not, we believe it is crucial that formal  
21 guidance regarding institutional controls should be  
22 issued because of: number one, the LTR dose criteria  
23 should institutional controls fail; and, number two,  
24 the presumptive failure of institutional controls in  
25 long-range EIS analyses, such as a few hundred years

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1 and beyond.

2 Some views on this subject were presented  
3 in responses A.6 and B.6 in Section IV, in the Summary  
4 of Public Comments and Responses to Comments of the  
5 Policy Statement. But definitive guidance is clearly  
6 necessary to ensure the proper evaluation of  
7 alternatives and completion of the EIS.

8 The CTF appreciates the effort put forth  
9 by the Commission and the NRC staff over the past  
10 several years in developing this policy for West  
11 Valley. Unfortunately, we cannot agree with the  
12 inordinate level of flexibility which has been built  
13 into the policy. The result is a document which  
14 neither ensures an adequate level of protection to  
15 local residents and the region, nor provides any  
16 definite limitations on the range of cleanup  
17 alternatives which can still be considered by DOE.

18 As the policy statement now reads, NRC  
19 will render no actual decision regarding any  
20 alternative until after the EIS has been completed.  
21 Again, we feel that this compromises NRC's integrity  
22 and express authority in providing impartial  
23 regulatory oversight of DOE activities, and fails to  
24 satisfy the Commission's legislated obligation for  
25 prescribing West Valley demonstration project

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1 decommissioning criteria.

2           Consequently, the final policy statement  
3 may be subject to a legal challenge, and certainly  
4 should be subject to Congressional scrutiny and  
5 possible rejection.

6           We expect the Commission to reconsider  
7 their position on this matter to include the consensus  
8 views of the community and local government interests,  
9 as represented by the CTF membership.

10           Thank you.

11           You already have a copy.

12           MR. CAMERON: Thank you, Warren. Yes, we  
13 have a copy for the transcript.

14           Well, we've heard presentations from a  
15 number of agencies tonight. You've heard  
16 representatives from the community, including citizens  
17 groups, the task force, others in the community. We  
18 are at our adjournment time, but let me ask if, based  
19 on what you heard, are there any other questions or  
20 comments that anyone wants to make before we close  
21 tonight?

22           Yes, Ray?

23           MR. VAUGHN: In my main comments I did not  
24 thank the group as a whole, and I do want to thank all  
25 of the regulators for convening this opportunity.

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1 MR. CAMERON: Okay. Thank you, Ray, for  
2 expressing that.

3 Lee, did you have a comment?

4 MS. LAMBERT: Hi. I'm Lee Lambert.  
5 Again, coming from the task force meetings when they  
6 first started in February 1997, there was a  
7 misunderstanding. I thought that we were going to be  
8 part of the committee; we weren't. We tried to become  
9 part of it for quite some time, and we've made  
10 comments on the procedures.

11 One of my first questions, even before I  
12 was on the committee, was, where are the criteria?  
13 How can we make any decisions here when we don't even  
14 know what the criteria are going to be?

15 And that was a question that came up from  
16 -- through the next roughly two years until the first  
17 draft came out. The actual criteria was a paragraph  
18 about an inch and a half, maybe two at the most. And  
19 it was sent back by the Commissioners with a number of  
20 comments to the staff from the Commissioners, and then  
21 they came back again and that was our first draft that  
22 we commented on -- that was commented on in January of  
23 2000.

24 One of the problems that we've had with  
25 citizen participation is suspicion of the government

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1 in thinking that this is not going to do any good, and  
2 they're not going to listen to me.

3 When they come out with something in  
4 November, or in the middle of December, and they gave  
5 you 30 days or 60 days to respond -- this has happened  
6 in -- involved with the Army, and then they give you  
7 through January 5th to respond. And groups are not  
8 always meeting in December, and so you can't even get  
9 your group together to decide what you're going to get  
10 as a response.

11 So this is a big problem in public  
12 participation, and I would like all of the regulators  
13 to know that this is what we're seeing. Public  
14 participation is what we are urging.

15 So at any rate, that draft came out. We  
16 wrote a letter and asked for an extension of time  
17 because we knew there wasn't enough time to put  
18 together a response, which was given. And we  
19 responded in March of 2000.

20 We included an entire page of  
21 environmental laws and regulations that we were  
22 involved in -- in effect for 20, 30, 40 years. And so  
23 we felt that we were very involved in the environment,  
24 and we had a good deal of encouragement that perhaps  
25 this time we would see some results. And it didn't

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1       happen, and here we are two years later and we don't  
2       feel that this draft -- that this final policy  
3       statement is really any better than what came out two  
4       years ago.

5               And so I still -- I guess I'm asking the  
6       same question again that I asked five years ago.  
7       Where are the criterion?

8               Thank you.

9               MR. CAMERON:   Okay.   Thank you.   Thank  
10       you, Lee.

11              Carol?

12              MS. MONGERSON:   I just realized that I  
13       didn't really complete my thought about my vision, and  
14       I'd like the opportunity to do that.

15              MR. CAMERON:   Absolutely.

16              MS. MONGERSON:   My vision really includes  
17       a new demonstration project.   It includes --

18              MR. CAMERON:       Carol, I'm sorry to  
19       interrupt you.   I don't think that we're getting you  
20       on the transcript.   Do you mind coming up here?

21              MS. MONGERSON:   My vision really includes  
22       the starting of a new demonstration project.   It would  
23       mean going to Washington for new funding.   One of the  
24       benefits to DOE would be that you'd have all of us  
25       behind you instead of against you, if we could be sure

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1 that you were going to clean up this site in some way  
2 that was acceptable to us.

3 So we would go to Washington and fight for  
4 that kind of a demonstration project. I don't think  
5 it is totally unreasonable to think that that could  
6 happen. And I'd like to just think about that.

7 MR. CAMERON: Okay. Thank you, Carol.

8 I'd like to thank all of you for your  
9 patience tonight. We did present a lot of material to  
10 you, and we didn't have any light. But also, thank  
11 you for your thoughtful comments. And I'd just like  
12 to turn it over for -- if he wants to make any final  
13 brief comments -- to Larry Camper, who is our senior  
14 NRC official here. Larry?

15 MR. CAMPER: Yes. Thank you, Chip.

16 Let me say that between the meeting last  
17 night, the meeting this morning, and the meeting  
18 tonight that we've heard a lot of input from many of  
19 you. First, we appreciate the input. It is an  
20 important component of the process.

21 We have listened intently. We will be  
22 preparing summary information that we will share with  
23 senior management at the NRC and the Commission.

24 We have a number of letters that have been  
25 presented to us. I have seen two tonight on behalf of

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1 the CTF that were read to you. We also have one from  
2 NYSERDA that I saw a few minutes ago for the first  
3 time. I'm virtually certain that in our process those  
4 incoming letters will be ticketed. The staff will be  
5 assigned to prepare responses.

6 As a result of those responses, I think  
7 that we can provide further clarification about the  
8 policy statement and some of the issues that we raised  
9 in those letters.

10 I'm not certain that we'll ever be able to  
11 give everyone an answer that they will be totally  
12 satisfied with. But it is incumbent upon us, to the  
13 maximum extent possible, to clarify and answer the  
14 letters and try to explain what the policy statement  
15 means.

16 I would like to emphasize remarks that I  
17 have made in all three meetings. And that is that the  
18 Commission is very interested in seeing this  
19 decommissioning criteria applied at this site, the  
20 LTR, and the policy statement being addressed fully  
21 within the environmental impact statement and the  
22 delineation of the preferred alternative.

23 We're going to be actively involved in  
24 that process. We do view the final policy statement,  
25 although some may view it as having flaws, we

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1 understand that. It is a major milestone in this  
2 process.

3 And I want to repeat what I said earlier  
4 about encouraging us all to focus on the environmental  
5 impact statement, the development of the preferred  
6 alternative, bringing to bear many of the concerns  
7 that you've expressed as DOE, NYSERDA, EPA, and NRC go  
8 through the development of that environmental impact  
9 statement. All of those comments will be considered  
10 and addressed as part of that process.

11 And I guess I'd like to leave you with one  
12 final thought. The decommissioning of sites is always  
13 difficult and complex, not only at West Valley. And  
14 there are concerned citizens at every one of those  
15 sites as well. But I want to assure you, as sincerely  
16 and strongly as I can, the NRC, EPA, the state  
17 regulators, and, yes, DOE and NYSERDA are all  
18 committed to the same thing -- that decommissioning  
19 the site is successful, to a standard that will  
20 protect public health and safety.

21 And we're going to be as open in the  
22 process as we can. There will be further meetings.  
23 There will be further discussions. We will continue  
24 to invite your participation.

25 We appreciate your input, and we thank

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1 you.

2 MR. CAMERON: Okay. Thank you. We're  
3 adjourned.

4 (Whereupon, at 10:10 p.m., the  
5 proceedings in the foregoing matter were  
6 adjourned.)

7

8 Attachment: ML021270008

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